

Summary of the Conflict of Interest Law for State Employees

This summary of the conflict of interest law, General Laws chapter 268A, is intended to help state employees understand how that law applies to them. This summary is not a substitute for legal advice, nor does it mention every aspect of the law that may apply in a particular situation. State employees can obtain free confidential advice about the conflict of interest law from the Commission's Legal Division. State agency counsel may also provide advice.

The conflict of interest law seeks to prevent conflicts between private interests and public duties, foster integrity in public service, and promote the public's trust and confidence in that service by placing restrictions on what state employees may do on the job, after hours, and after leaving public service, as described below. The sections referenced below are sections of G.L. c. 268A.

When the Commission determines that the conflict of interest law has been violated, it can impose a civil penalty of up to \$10,000 (\$25,000 for bribery cases) for each violation. In addition, the Commission can order the violator to repay any economic advantage he gained by the violation, and to make restitution to injured third parties. Violations of the conflict of interest law can also be prosecuted criminally.

I. Are you a state employee for conflict of interest law purposes?

You do not have to be a full-time, paid state employee to be considered a state employee for conflict of interest purposes. Anyone performing services for a state agency or holding a state position, whether paid or unpaid, including full- and part-time state employees, elected officials, volunteers, and consultants, is a state employee under the conflict of interest law. An employee of a private firm can also be a state employee, if the private firm has a contract with the state and the employee is a "key employee" under the contract, meaning the state has specifically contracted for her services. The law also covers private parties who engage in impermissible dealings with state employees, such as offering bribes or illegal gifts.

II. Applying for State Employment. (See Section 6B)

State agencies reviewing employment applications are required to request, and applicants for state employment are required to disclose, information about applicants' family members who are already employed by the state. Every applicant for state employment must disclose, in writing, the names of any

state employee who is related to the applicant as spouse, parent, child, sibling, or the spouse of the applicant's parent, child, or sibling.

III. On-the-job restrictions.

(a) Bribes. Asking for and taking bribes is prohibited. (See Section 2)

A bribe is anything of value corruptly received by a state employee in exchange for the employee being influenced in his official actions. Giving, offering, receiving, or asking for a bribe is illegal.

Bribes are more serious than illegal gifts because they involve corrupt intent. In other words, the state employee intends to sell his office by agreeing to do or not do some official act, and the giver intends to influence him to do so. Bribes of any value are illegal.

(b) Gifts and gratuities. Asking for or accepting a gift because of your official position, or because of something you can do or have done in your official position, is prohibited. (See Sections 3, 23(b)(2), and 26)

State employees may not accept gifts and gratuities valued at \$50 or more given to influence their official actions or because of their official position. Accepting a gift intended to reward past official action or to bring about future official action is illegal, as is giving such gifts. Accepting a gift given to you because of the state position you hold is also illegal. Meals, entertainment event tickets, golf, gift baskets, and payment of travel expenses can all be illegal gifts if given in connection with official action or position, as can anything worth \$50 or more. A number of smaller gifts together worth \$50 or more may also violate these sections.

Example of violation: A highway inspector allows a pavement contractor to buy him lunch every day during a two-month road repaving project.

Example of violation: An industry association provides a free day's social outing, including a barbecue lunch, golf, a cocktail hour, and a clam bake, to a group of legislators.

Regulatory exemptions. There are situations in which a state employee's receipt of a gift does not present a genuine risk of a conflict of interest, and may in fact advance the public interest. The Commission has created exemptions permitting giving and receiving gifts in these situations. One commonly used exemption permits state employees to accept payment of travel-related expenses when doing so advances a public purpose and a written disclosure is made. Another commonly used exemption

permits state employees to accept payment of costs involved in attendance at educational and training programs. Other exemptions are listed on the Commission's website.

Example where there is no violation: A non-profit concerned with preventing domestic violence offers to pay the travel expenses of an assistant district attorney to a conference on prosecuting domestic violence cases. The attorney fills out a disclosure form and obtains prior approval from his appointing authority.

Example where there is no violation: A professional engineers' association offers a continuing education seminar of substantial value and waives the registration and materials fees for state employees who are engineers. The state engineers must make a disclosure only if the sponsoring entities have official business before them during the six months before and after the seminar.

(c) Misuse of position. Using your official position to get something you are not entitled to, or to get someone else something they are not entitled to, is prohibited. Causing someone else to do these things is also prohibited. (See Sections 23(b)(2) and 26)

A state employee may not use her official position to get something worth \$50 or more that would not be properly available to other similarly situated individuals. Similarly, a state employee may not use her official position to get something worth \$50 or more for someone else that would not be properly available to other similarly situated individuals. Causing someone else to do these things is also prohibited.

Example of violation: A state employee writes a novel on work time, using her office computer, and directing her secretary to proofread the draft.

Example of violation: The commissioner of a state agency directs subordinates to drive her wife to and from the grocery store.

Example of violation: An assistant attorney general avoids a speeding ticket by asking the police officer who stops him, "Do you know who I am?" and showing his state I.D.

(d) Self-dealing and nepotism. Participating as a state employee in a matter in which you, your immediate family, your business organization, or your future employer has a financial interest is prohibited. (See Section 6)

A state employee may not participate in any particular matter in which he or a member of his immediate family (parents, children, siblings, spouse, and spouse's parents, children, and siblings) has a financial interest. He also may not participate in any particular matter in which a prospective employer, or a

business organization of which he is a director, officer, trustee, or employee has a financial interest. Participation includes discussing as well as voting on a matter, and delegating a matter to someone else.

A financial interest may create a conflict of interest whether it is large or small, and positive or negative. In other words, it does not matter if a lot of money is involved or only a little. It also does not matter if you are putting money into your pocket or taking it out. If you, your immediate family, your business, or your employer have or has a financial interest in a matter, you may not participate. The financial interest must be direct and immediate or reasonably foreseeable to create a conflict. Financial interests which are remote, speculative or not sufficiently identifiable do not create conflicts.

Neither general legislation nor home rule legislation are "particular matters" for purposes of the conflict of interest law. A state employee can participate in general legislation and home rule legislation even if she has a financial interest in such legislation, but state legislators and constitutional officers must file a disclosure if the matter will substantially affect their financial interests, and any state employee must file a disclosure if a reasonable person would think that the employee could be improperly influenced.

Example of violation: The chief administrative officer of a state agency, who has a balance of 900 hours in accumulated sick leave, proposes a plan by which the agency will pay employees for accumulated sick leave.

Example of violation: An employee of the Massachusetts Cultural Council is also the director of a non-profit corporation dedicated to increasing art in public spaces. The non-profit applies to the Council for a grant, and the employee participates in rating the applications received for that grant.

Example of violation: A state employee promotes his son to a position under his supervision.

Example where there is no violation: Proposed legislation under consideration by the State Senate will amend the General Laws with respect to insurance coverage of ocean front property. A State Senator owns ocean front property in Cape Cod. The Senator can discuss and vote on the legislation because it is general legislation, but must file a disclosure because the legislation will substantially affect her financial interest.

A state employee whose duties do not require her to participate in a particular matter may comply with the law by simply not participating in the particular matter in which she has a financial interest. She need not give a reason for not participating.

An appointed state employee may also comply with the law by filing a written disclosure about the financial interest with his appointing authority, and seeking permission to participate notwithstanding the conflict. If a state employee's duties would require him to participate in a matter in which he has a financial interest, this is the procedure he should use. The appointing authority may grant written

permission to participate if she determines that the financial interest in question is not so substantial that it is likely to affect the integrity of the employee's services to the state. Otherwise, the appointing authority will assign the matter to someone else, or do it herself. Participating without disclosing the financial interest is a violation. Elected employees cannot use the disclosure procedure because they have no appointing authority.

Regulatory exemptions. The Commission has created exemptions permitting state employees to participate in particular matters notwithstanding the presence of a financial interest in certain very specific situations when permitting them to do so advances a public purpose. A person serving as a member of a state board pursuant to a legal requirement that the board have members with a specified affiliation may participate fully in determinations of general policy by the board, even if the entity with which he is affiliated has a financial interest in the matter. A state elected official may participate in a particular matter that involves a determination of general policy where her financial interest in the matter is shared with a substantial segment of the public, as defined in the Commission's regulation. Other exemptions are listed on the Commission's website.

Example where there is no violation: A state licensing board is required by its enabling legislation to have members with various specified affiliations, including members licensed by the board, and members involved in providing training required for licensure. Board members wish to participate in board discussions about imposing a continuing education requirement on licensees. Compliance with the proposed requirement will cost every licensee several hundred dollars per year. Board members who are licensees and who provide training required for licensure may participate in the determination of the continuing education requirement notwithstanding their financial interests in that matter, because it is a determination of general policy.

(e) False claims. Presenting a false claim to your employer for a payment or benefit is prohibited, and causing someone else to do so is also prohibited. (See Sections 23(b)(4) and 26)

A state employee may not present a false or fraudulent claim to his employer for any payment or benefit worth \$50 or more, or cause another person to do so.

Example of violation : A state agency manager directs his secretary to fill out time sheets to show him as present at work on days when he was skiing.

(f) Appearance of conflict. Acting in a manner that would make a reasonable person think you can be improperly influenced is prohibited. (See Section 23(b)(3))

A state employee may not act in a manner that would cause a reasonable person to think that she would show favor toward someone, or that she can be improperly influenced. Section 23(b)(3) requires a state

employee to consider whether her relationships and affiliations could prevent her from acting fairly and objectively when she performs her duties for the state. If she cannot be fair and objective because of a relationship or affiliation, she should not perform her duties. However, a state employee, whether elected or appointed, can avoid violating this provision by making a public disclosure of the facts. An appointed employee must make the disclosure in writing to his appointing official.

Example where there is no violation: A state agency employee is engaged to be married to the owner of a business. The business owner submits a response to a request for proposals from the agency. A reasonable person could conclude that the employee might favor her fiancé's response. The employee files a written disclosure with her appointing authority explaining her relationship with her fiancé prior to the meeting at which responses to the RFP will be considered. There is no violation of Section 23(b)(3).

Example where there is no violation: The State House of Representatives is considering legislation which will create a general law that sets a maximum limit on insurance premiums paid by obstetricians. A State Representative is married to an obstetrician who will be affected by the proposed legislation. The Representative can participate in the matter but files a disclosure of his wife's interest to eliminate any appearance of a conflict. There is no violation.

(g) Confidential information. Improperly disclosing or personally using confidential information obtained through your job is prohibited. (See Section 23(c))

State employees may not improperly disclose confidential information, or make personal use of non-public information they acquired in the course of their official duties to further their personal interests.

IV. After-hours restrictions.

(a) Taking a second paid job that conflicts with the duties of your state job is prohibited. (See Section 23(b)(1))

A state employee may not accept other paid employment if the responsibilities of the second job are incompatible with his or her state job.

Example: A state police trooper may not work as a paid private security guard in the area where he serves because the demands of his private employment would conflict with his duties as a trooper.

Example: A State Senator may not take a second position counseling clients on how to receive favorable consideration in the Massachusetts Senate.

(b) Divided loyalties. Receiving pay from anyone other than the state to work on a matter involving the state is prohibited. Acting as agent or attorney for anyone other than the state in a matter involving the state is also prohibited whether or not you are paid. (See Section 4)

Because the Commonwealth is entitled to the undivided loyalty of its employees, a state employee may not be paid by other people and organizations in relation to a matter in which the state has an interest. In addition, a state employee may not act on behalf of other people and organizations or act as an attorney for other people and organizations if the state has an interest in a matter. Acting as agent includes contacting the state in person, by phone, or in writing; acting as a liaison; providing documents to the state; and serving as spokesman.

A state employee may always represent his own personal interests, even before his own state agency or board, on the same terms and conditions that would apply to other similarly situated members of the public.

Section 4 applies differently to State Senators and State Representatives than it does to other state employees, because they must frequently act on behalf of their constituents. Section 4 allows State Senators and State Representatives to perform constituent services, but prohibits them from appearing personally before state agencies for compensation other than their legislative salaries except on ministerial matters such as filing tax returns, permit and license applications, and incorporation papers, and in state court proceedings and quasi-judicial agency proceedings.

Example of violation: A state employee makes inquiries to another state agency about an investigation that the second state agency is conducting of his wife.

Example of violation: A state advisory commission member participates in matters at his agency that affect one of his private clients, and is compensated by the client for his work on its behalf.

Example where there is no violation: A State Senator is contacted by a constituent who has applied for benefits to a state agency, has not received a timely determination by the agency, and cannot get his calls to the agency returned. The Senator may call the agency on the constituent's behalf to inquire about the matter. The Senator's aide may also call the agency on the constituent's behalf to inquire about the matter without violating Section 4.

While many state employees earn their livelihood in state jobs, some state employees volunteer their time to the state or receive small stipends. Others may serve in a part-time state position which permits them to have other personal or private employment during normal working hours. In recognition of the need not to unduly restrict the ability of volunteers and part-time employees to earn a living, the law is less restrictive for these "special" state employees than for other state employees.

If a state position is a "special" state position, an employee holding that position may be paid by others, act on behalf of others, and act as attorney for others with respect to matters before state agencies other than his own, provided that he has not officially participated in the matter, and the matter is not now, and has not within the past year been, under his official responsibility, and is not pending before his own state agency.

Example: A part-time investigator for a state agency may work on her own time privately for a party litigating a case with a different state agency, provided that she has not participated in or had responsibility for the litigated matter in her state position.

(c) Inside track. Being paid by the state, directly or indirectly, under some second arrangement in addition to your job is prohibited, unless an exemption applies. (See Section 7)

A state employee generally may not have a financial interest in a state contract, including a second state job. A state employee is also generally prohibited from having an indirect financial interest in a contract that the state has with someone else. This provision is intended to prevent state employees from having an "inside track" to further financial opportunities.

Example of violation: A paid state employee accepts paid employment with a second state agency.

Example of violation: A paid state employee buys a surplus computer from his agency.

Example of violation: A state employee wants to work for a non-profit that receives funding under a contract with the state. Unless she can satisfy the requirements of an exemption under Section 7, she cannot take the job.

There are numerous exemptions. Some exemptions apply only to special state employees. Specific exemptions may cover State Senators and State Representatives, teaching and related activities in state facilities, serving as an uncompensated volunteer in a second state position, providing services to state agency clients, and other specific situations. Please call the Ethics Commission's Legal Division for advice about a specific situation.

V. After you leave state employment. (See Section 5)

(a) Forever ban. After you leave your state job, you may never work for anyone other than the state on a matter that you worked on as a state employee.

If you participated in a matter as a state employee, you cannot ever be paid to work on that same matter for anyone other than the state, nor may you act for someone else, whether paid or not. The purpose of this restriction is to bar former employees from selling to private interests their familiarity with the facts

of particular matters that are of continuing concern to the state. The restriction does not prohibit former state employees from using the expertise acquired in government service in their subsequent private activities.

Example of violation: A former state employee works for a contractor under a contract that she helped to draft and oversee for the state.

(b) One year cooling-off period. For one year after you leave your state job you may not participate in any matter over which you had official responsibility during your last two years of public service.

Former state employees are barred for one year after they leave state employment from personally appearing before any agency of the state in connection with matters that were under their authority in their prior state positions during the two years before they left.

Example: A state employee negotiates a three-year contract with a company. The manager who supervised the employee, and had official responsibility for the contract but did not participate in negotiating it, leaves her job to work for the company to which the contract was awarded. The former manager may not call or write the state in connection with the company's work on the contract for one year after leaving the state.

A former state employee who participated as such in general legislation on expanded gaming and related matters may not become an officer or employee of, or acquire a financial interest in, an applicant for a gaming license, or a gaming license, for one year after his public employment ceases.

(c) Partners. Your partners will be subject to restrictions while you serve as a state employee and after your state service ends.

Partners of state employees and former state employees are also subject to restrictions under the conflict of interest law. If a state employee participated in a matter, or if he has official responsibility for a matter, then his partner may not act on behalf of anyone other than the state or provide services as an attorney to anyone but the state in relation to the matter.

Example: An architect serves on the state Architectural Access Board, and is responsible for every matter that comes before the Board. While he serves, his partners may not submit architectural plans for any clients seeking a variance from the Board.

Example: A former state agency general counsel joins a law firm as a partner. Her new partners cannot represent any private clients in connection with matters she litigated for the state for one year after her job with the state ended.

Example: A professional engineer formerly employed by a state agency joins an engineering firm organized as a partnership. His new partners cannot appear before his former agency in connection with matters that he worked on for the state for one year after his job with the state ended.

(d) Legislative and executive agents. For one year after you leave your state job you may not act as a legislative or executive agent before your former agency.

Example of violation: The chief of staff of a State Senator leaves his position. Three months later, he contacts his successor to lobby on behalf of a client.

This summary is not intended to be legal advice and, because it is a summary, it does not mention every provision of the conflict law that may apply in a particular situation. You can find further information about how the law applies in many situations elsewhere on this website. You can also contact the Commission's Legal Division via this website, by telephone, or by letter.

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ACKNOWLEDGMENT OF RECEIPT

I, _____, an employee at _____, hereby
(first and last name) *(name of state agency)*

acknowledge that I received a copy of the summary of the conflict of interest law for state employees, revised
May 10, 2013, on _____.
(date)

State employees should complete the acknowledgment of receipt and return it to the individual who provided them with a copy of the summary. Alternatively, state employees may send an e-mail acknowledging receipt of the summary to the individual who provided them with a copy of it.

Elected State Officials should complete the acknowledgment of receipt and return it to the State Ethics Commission. Alternatively, elected state officials may send an email acknowledging receipt of the summary to the State Ethics Commission, attn: David Giannotti, at David.Giannotti@state.ma.us.