

Summary of the Conflict of Interest Law for County Employees

This summary of the conflict of interest law, General Laws chapter 268A, is intended to help county 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. County employees can obtain free confidential advice about the conflict of interest law from the Commission's Legal Division via the website, www.mass.gov/orgs/state-ethics-commission, by telephone, or by letter, and can also find additional information about the law elsewhere on the website.

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 county 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 county employee for conflict of interest law purposes?

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

II. 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 county 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 county 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)

County 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 county 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 county employee allows a contractor to buy him lunch every day during a two-month 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 county legislators.

Regulatory exemptions. There are situations in which a county 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 county employees to accept payment of travel-related expenses when doing so advances a public purpose. Another commonly used exemption permits county 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 public health issues offers to pay the travel expenses of a county public health employee to a conference on preventing swine flu. The employee fills out a disclosure form and obtains prior approval from his appointing authority.

(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 county 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 county 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 county 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 county agency directs subordinates to drive his spouse to and from the grocery store.

Example of violation: A county commissioner avoids a speeding ticket by asking the police officer who stops him, “Do you know who I am?” and showing his county I.D.

(d) Self-dealing and nepotism. Participating as a county 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 13)

A county 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.

Example of violation: The chief administrative officer of a county 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 county information technology department is also the director of a software company. The software company responds to a county request for proposals, and the employee participates in rating the responses to the RFP.

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

A county 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 county 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 the county 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 county. 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.

Example where there is no violation: An appointed member of a county commission wishes to participate in discussions about imposing a county-wide tax. The member will himself be subject to the tax. Prior to participating in any commission discussions, the member files a disclosure of his financial interest with his appointing authority, and the appointing authority gives him a written determination authorizing his participation, despite his financial interest. There is no violation.

(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 county 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 county 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 county 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 county employee to consider whether her relationships and affiliations could prevent her from acting fairly and objectively when she performs her duties for the county. If she cannot be fair and objective because of a relationship or affiliation, she should not perform her duties. However, a county 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 county 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 Sec. 23(b)(3).

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

County 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.

III. After-hours restrictions

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

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

(b) Divided loyalties. Receiving pay from anyone other than the county to work on a matter involving the county is prohibited. Acting as agent or attorney for anyone other than the county in a matter involving the county is also prohibited whether or not you are paid. (See Section 11)

Because counties are entitled to the undivided loyalty of their employees, a county employee may not be paid by other people and organizations in relation to a matter in which the county has an interest. In addition, a county employee may not act on behalf of other people and

organizations or act as an attorney for other people and organizations if the county has an interest in a matter. Acting as agent includes contacting the county in person, by phone, or in writing; acting as a liaison; providing documents to the county; and serving as spokesman.

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

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

Example of violation: A county 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.

While many county employees earn their livelihood in county jobs, some county employees volunteer their time to the county or receive small stipends. Others may serve in a part-time county 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” county employees than for other county employees.

If a county position is a “special” county 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 county 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 county agency.

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

(c) Inside track. Being paid by the county, directly or indirectly, under some second arrangement in addition to your job is prohibited, unless an exemption applies. (See Section 14)

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

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

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

Example of violation: A county employee wants to work for a non-profit that receives funding under a contract with the county. Unless she can satisfy the requirements of an exemption under Section 14, she cannot take the job.

There are exemptions to this section. For example, a paid county employee can take a second uncompensated position with the county without violating this section. Please call the Ethics Commission's Legal Division for advice about a specific situation.

IV. After you leave county employment (See Section 12)

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

If you participated in a matter as a county employee, you cannot ever be paid to work on that same matter for anyone other than the county, 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 county. The restriction does not prohibit former county employees from using the expertise acquired in government service in their subsequent private activities.

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

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

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

Example: A county 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 county in connection with the company's work on the contract for one year after leaving the county.

A former county 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 licensee, for one year after his public employment ceases.

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

Partners of county employees and former county employees are also subject to restrictions under the conflict of interest law. If a county 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 county or provide services as an attorney to anyone but the county in relation to the matter.

Example: A member of the regional council of governments who oversees natural resource preservation projects is a partner at an environmental consulting firm. His partners may not communicate with the council on behalf of any client who is involved in one of the projects.

Example: A former county 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 county for one year after her job with the county ended.

Example: A professional engineer formerly employed by a county 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 county for one year after his job with the county ended.

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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 the Commission's web content pages available at www.mass.gov/orgs/state-ethics-commission. You can also contact the Commission's Legal Division via the web content, by telephone, or by letter.

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ACKNOWLEDGMENT OF RECEIPT

I, _____, an employee at _____
(first and last name) (name of county agency)

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

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

Elected County Officials should complete the acknowledgment of receipt and return it to the State Ethics Commission. Alternatively, elected county officials may send an email acknowledging receipt of the summary to the State Ethics Commission, Attn: Arthur Xia, at Arthur.S.Xia@mass.gov.