

ASK THE ETHICIST

Chapter 68 and Private Employment

By
Jeff Tremblay

Question: *I'm an employee at a New York City agency, and I'm thinking of supplementing my income with private work for a for-profit company. What restrictions do the City's ethics laws place on outside employment?*

Answer: A City employee must navigate a number of provisions of the City's ethics law when he or she works a second job in the private sector. Some of the restrictions on outside employment are intuitive. Others are less so.



The restrictions begin during the job-hunting process. A City employee is prohibited from soliciting, negotiating for, or accepting a position with any person or firm that is involved in a particular matter with the City while the public servant is actively considering, directly concerned, or personally participating in such particular matter on behalf of the City. This restriction helps to ensure that companies with business before the City do not receive special treatment in exchange for providing a City employee with a job. Because of the danger of inappropriate influence, this rule is broadly construed; even sending a resume out to a company that has a matter on which you are working could be considered a violation of the law.

In conducting a job search, a City employee should also keep in mind that he or she is prohibited from working for certain companies that have "business dealings" with the City. A full-time City employee is prohibited from having a position with a company doing business with any City agency. See City Charter § 2604(a)(1)(b). If the City employee only works part-time, he or she is only prohibited from working for a company that has business dealings with his or her own City agency. See City Charter § 2604(a)(1)(a). Chapter 68 provides that City employees who knew or should have known of the City business dealings are responsible under the law. See City Charter § 2604(a)(6).

Once the job hunt is over and a City employee begins working a second job, a number of additional restrictions come into play. Perhaps the most obvious restrictions are that the City employee may not use any City time or resources to perform work for the outside company. The City's Acceptable Use Policy, which allows for a City employee to make incidental personal use of City time and resources for personal reasons, does not apply to activities that financially benefit the employee. There is no acceptable level of use for personal financial gain, and even minimal uses of City time and resources are prosecuted.

A City employee is also prohibited from using his or her City position to further his or her private interests. As such, a City employee may not use his or her City title in advertisements for the outside company. It also means that a City employee cannot ask his or her subordinates to perform services for, purchase products or services from, or otherwise support the private company.

Additionally, a City employee cannot “appear before” the City on behalf of his or her private employer. A City employee appears before the City any time he or she makes a communication, for compensation, other than those involving what the City Charter calls “ministerial matters.” The level of “communication” necessary for such an appearance is minimal; even silently attending a meeting where City employees are present has been deemed an appearance before the City. Similarly, the ministerial matter exception, which allows for a City employee to make appearances related to an administrative act that does not involve substantial personal discretion is narrow. The threshold used by the Board to determine whether there exists substantial personal discretion is so low that the request and issuance of some permits has been deemed to be non-ministerial and therefore requesting them would be a prohibited appearance before the City.

Clearly, there are a lot of restrictions that could apply to a public servant who wishes to moonlight for a private company, and not all of them apply to all employees. Given the volume and complexity of these restrictions, the Board suggests that you call to get advice regarding your particular situation before taking a second job. You can call the Board’s Attorney of the Day Monday through Friday from 9 a.m. to 5 p.m. at (212)442-1400.

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