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to good government

The Ethical Times

A Publication of the New York City Conflicts of Interest Board

Phil Weitzman, Editor



Post-Employment

By
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Question: *I am getting ready to leave my City job and want to work in the private sector. Are there any rules I need to know about as I search for new positions?*

Answer: As a City employee, you may not seek, negotiate for, or accept a non-City job with any firm or entity with which you are personally involved in your City job. This rule applies not only to the specific firm you are dealing with at your City job, but also to its parent firm, subsidiaries, and sister firms. So, if you are interested in applying for a job with a private firm, it is your responsibility to determine whether the firm is connected to a firm that you deal with in your City job. Just because your agency or office is involved with a firm does not make you involved with the firm. But you should assume that the rule applies if you have anything to do with the firm as part of your City job. For example, if you sign any documents, such as a purchase order or a contract, involving the firm, you are personally involved with the firm under the City's Conflicts of Interest law.

You can avoid violating the law by asking your supervisor to remove you from work that involves the firm whose contracts you administer, purchase orders you sign, or work you approve. If your supervisor agrees to this request, it would be okay for you to contact the firm about a job. But if your supervisor is unable or unwilling to reassign you, you must wait until your involvement with the firm ends before approaching the firm about job hunting.

Question: *I found a great new private sector job with a large City vendor, and I have been asked to represent my new employer in meetings with various City agencies, including my former agency. Can I do this?*

Answer: No. Public servants who have left City service are bound by the following rules, which are intended to prevent public servants from exploiting confidential City information and misusing their City agency contacts to advance themselves or to give their new employers an unfair advantage.

Rule 1. You may not appear before your former City agency on business matters for one year after you leave the agency.

This rule prohibits former City employees from "appearing" before their former City agency during the first year after they have resigned or retired from City service. "Appear" means any substantive communication, such as telephoning, writing, faxing, emailing, or attending meetings with the employees of your former City agency on behalf of your new employer. The 12-month prohibited contact period begins the day that you leave the City payroll. You are, however, permitted to have "ministerial" communications with your former agency, such as calling to ask for the fax number or picking up papers from the office receptionist.

Rule 2. You cannot work on a matter in which you were directly involved as a public servant.

Unlike the one-year communication ban explained above, this rule prohibits former City employees from ever working in the private sector on the same particular matter they worked on as a public servant. This rule applies even to work "behind the scenes."

Particular matters are defined as proceedings, applications, investigations, contracts, or other similar actions where the public servant's involvement was "personal and substantial." This term is narrowly defined and applies only to the life of a specific contract or agreement, meaning that a public servant who is barred from working on a particular matter between the City and his current employer may work on a new matter between the same parties, provided that he was not involved with that new matter while in City service.

Rule 3. Any confidential information you obtained while in City service remains confidential even after you leave City service.

You are not allowed to disclose or use any confidential information after leaving City service. Confidential information is any information that a member of the general public cannot obtain. It cannot be disclosed, and it cannot be used for your own personal advantage or for the benefit of your new employer.

Question: *My new firm wants to bid on a City contract. Can I help prepare the submission? What about working on an existing contract I helped draft?*

Answer: The answer to your question on preparing the submission may depend on what you want to do. Even within the first year of your departure from City service, you can work behind the scenes on work submitted to your former agency, provided that you are not the person who submits the document to the City and provided that you do not disclose confidential information and were not involved in that matter (for example, in helping to draft the RFP) while in City service. Your name can even be listed as one of the people on the team.

As for working on an existing contract, the post-employment rules prohibit you from working on any contracts you were personally and substantially involved with while in City service. So, once you leave City service, you can't work on any contracts you helped draft, or were otherwise personally and substantially involved with, because doing so will violate the conflicts of interest rules.

Question: *What happens if I need to contact the City as part of my new private sector position? Are there exceptions to these rules? I have heard about the possibility of getting a waiver; so how do I get one?*

Answer: In certain cases, the Board will issue waivers granting ex-

ceptions to these rules, but these waivers are rare and difficult to obtain. And, before you can even apply for a Board waiver, you must first get permission from the head of your former City agency.

Since post-employment waivers are rarely granted by the Board, you cannot count on receiving one, and we recommend you do not accept a private sector job where your responsibilities to your new employer would require you to violate one of the post-employment rules without first applying for and receiving a waiver. When the Board considers an application for a post-employment waiver, it looks at a number of factors, such as where the former public servant is working (e.g., Is the private employer a vendor to the City? Is it a not-for-profit entity raising private funds to give to the City?), whether another employee at the private firm can do the work the former public servant is prohibited from performing by the post-employment rules, and the importance of the proposed work to the City and its interests. Finally, because an application for a waiver must be made by your former agency, your former commissioner must provide his or her approval in writing, so your former commissioner must agree with you that a waiver is in the best interests of the City.

The Board strongly recommends that you apply for a waiver, if you think you need one, **before leaving City service**, and that when searching for private sector employment, you do not count on receiving a waiver. If you are wondering if a job you may be interested in taking would require you to get a waiver, please ask Board staff. Violating one of the post-employment rules once you have left City employment means a possible enforcement action against you and a fine of up to \$25,000 per violation.

Question: *What if I have any more questions about job-hunting and post-employment restrictions?*

Answer: If you have any doubt at all about whether your job hunting as a City employee or your conduct as a former City employee creates a conflict of interest, call the Conflicts of Interest Board at 212-442-1400 and ask for the attorney of the day. You can also email us through our website (<http://www.nyc.gov/ethics>) by clicking on "Contact COIB." All calls and emails are confidential, and you may contact us anonymously.

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This article originally appeared in The Chief Leader.

Recent Enforcement Cases

▶ The Board and DOHMH fined a Public Health Advisor \$1,000 for taking his City computer monitor home for his personal use over a long weekend.

▶ The Board fined a former FDNY Electrician \$12,500 for supervising his son-in-law, including approving overtime, from at least 2007 until the father-in-law's retirement in 2010. The son received a \$1,500 fine.

▶ After a full trial at OATH, the Board fined a DOB Inspector \$2,500 for invoking his City position and using his Inspector's badge in an effort to get special treatment for his incarcerated son.

▶ In a joint disposition, the Board and DOHMH fined a Motor Vehicle Operator \$2,440 for informing a friend that he had seen the friend's girlfriend at a DOHMH STD Clinic, after which the friend assaulted the girlfriend. The names of patients at DOHMH clinics are confidential.

▶ The Board issued a Public Warning Letter to a DOE Teacher for asking two students in her class to pass out flyers on behalf of a daycare center with which the Teacher was associated, for which work she paid the students \$35.

▶ In a joint disposition with the Board and HRA, an HRA Eligibility Specialist received a five-day suspension for using a state database to look up information regarding a friend to whom he owed money.

▶ The Board fined a former Administrative Chaplain for the Department of Correction \$2,500 for accepting a solid silver Kiddush cup and plate as a gift from an inmate as a token of appreciation for arranging a private event at a City jail to celebrate the Bar Mitzvah of the inmate's son.

▶ The Board fined the former DOE Chief Financial Officer \$6,500 for using his DOE e-mail account to perform work related to (a) a private financial services firm at which he became employed upon leaving DOE; and (b) his private real estate investment business.

▶ The Board fined a former Bronx Borough President \$10,000 in connection with renovating his home with help from the architect of a development project that sought his official approval. The former Borough President admitted that, even though the initial construction work on the porch was finished in March 2007 and he paid the builders at that time, he did not receive a bill from the architect until after a newspa-

per contacted him in March 2009 about the architect's services, at which time he paid the architect for his work.

▶ In a joint disposition with the Board and OATH, an OATH Clerical Associate forfeited four days of annual leave for admitting a process server into a non-public area of her office to serve a summons for her lawsuit against her coworkers.

▶ In a joint disposition with the Board and DOHMH, an Associate Public Health Sanitarian agreed to resign from DOHMH and pay several other financial penalties for borrowing a DOHMH vehicle without permission for his private entertainment business, during which time the vehicle was damaged in a car accident.

▶ In a joint disposition with the Board and ACS, a Child Protective Specialist received a five-day suspension for accessing a state database to view information about a complaint filed against her son.

▶ In a joint disposition with the Board and ACS, a Child Protective Specialist Supervisor received a fifteen-day suspension for accessing a state database to share confidential information about the father of her niece's child with her niece.

*Interested in more information?
Get in touch with COIB's Training &
Education Unit to arrange a class in
Chapter 68 for you and your staff.
Contact Alex Kipp, Director of Training, at
kipp@coib.nyc.gov*

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