



# CITY OF NEW YORK CONFLICTS OF INTEREST BOARD

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## Post-Employment Restrictions Separation from City Service

Charter Sections: 2604(d)(2)  
2604(d)(3)

### Advisory Opinion 98-11

The Conflicts of Interest Board has received requests from several public servants asking when the one-year post-employment appearance ban contained in Charter Sections 2604(d)(2) and (d)(3) begins to run for public servants leaving City service. For the reasons discussed below, the Board has determined that, for the purposes of the application of Charter Sections 2604(d)(2) and (d)(3), the date of termination from City service (and thus, the date on which the one-year appearance ban begins to run) is the date on which a public servant effectively resigns and stops working for the City; it is not the date on which the public servant receives all payment by the City for unused leave balances or payment for lagged paychecks.

### Discussion

Chapter 68 contains a number of restrictions governing the conduct of City employees after they have left City service. These restrictions, contained in

Charter Section 2604(d), are called the "post-employment restrictions." The primary purpose of these restrictions is to protect and preserve the integrity of government decision-making.

One of the post-employment restrictions, contained in Charter Section 2604(d)(2),<sup>1</sup> is often referred to as the "one-year ban." This Charter provision prohibits former public servants from appearing<sup>2</sup> before their former City agency within one year of separation from City service. Thus, for one year after leaving City service, former public servants may not write letters, attend meetings, make telephone calls or otherwise be in contact with their former agencies on non-ministerial matters.<sup>3</sup> Certain former high-level public servants may not have contact with their branch of City government for one year after

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<sup>1</sup> Charter Section 2604(d)(2) provides that "[n]o former public servant shall, within a period of one year after the termination of such person's service with the city, appear before the city agency served by such public servant."

<sup>2</sup> "'Appear' means to make any communication, for compensation, other than those involving ministerial matters." Charter Section 2601(4).

<sup>3</sup> Charter Section 2501(15) defines a "ministerial matter" as "an administrative act, including the issuance of a license, permit or other permission by the city, which is carried out in a prescribed manner and which does not involve substantial personal discretion."

leaving City service.<sup>4</sup>

After a public servant leaves City service, he or she receives a lagged paycheck representing salary payments for service rendered prior to leaving City service. In addition, departing public servants are entitled, subject to the time and leave regulations of the City, to payment for unused annual leave, compensatory time and sick leave. The manner in which managerial and non-managerial employees receive such payment varies.

Managerial employees are paid a lump sum. After an audit by the Comptroller's Office, managerial employees who have left City service receive payment for unused leave time in accordance with the City's time and leave regulations.

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<sup>4</sup> Charter Section 2604(d)(3) contains a broader appearance ban for certain designated high-level public servants: "No elected official, nor the holder of the position of deputy mayor, director of the office of management and budget, personnel director, commissioner of general services, corporation counsel, commissioner of finance, commissioner of investigation or chair of the city planning commission shall, within a period of one year after termination of such person's employment with the city, appear before any agency in the branch of city government served by such person." Charter Section 2604(d)(3). Charter Section 2604(d)(3) delineates two branches of City government: the legislative branch, consisting of the City Council and office of the City Council; and the executive branch, consisting of all other agencies of the City.

In contrast, non-managerial employees continue to receive periodic checks, ordinarily in an amount and at intervals equivalent to their previous paychecks, in payment for unused annual leave, sick leave and compensatory time. The former public servant will continue to receive these checks at regular intervals until all leave balances are exhausted. The former public servant is not, however, working for the City, is not entitled to any City benefits (other than those available to former City employees) and does not continue to accrue any leave.

Because employees continue to receive lump sum payments or regular checks from the City for unused leave time, the question arises whether these public servants have terminated their City service for purposes of Chapter 68.

The New York State Ethics Commission in its Advisory Opinion No. 91-12 considered this very issue. In that Opinion, the State Ethics Commission stated: "[T]he date of termination is the date on which a former employee was removed from the payroll and ceased employment benefits related to active employment." State Ethics Commission Advisory Opinion No. 91-12 at 244. That Opinion also states:

Removal from the payroll means that the

individual is not reflected in the payroll records of the appointing authority as being eligible to receive payment for services to be rendered prospectively. The receipt of "lagged" paychecks with payment for unused leave accruals does not extend the period "on the payroll" because it involves payment for previously rendered services or accrued benefits.

State Ethics Commission Advisory Opinion No. 91-12, n. 3.

### Conclusion

The Board adopts the approach taken by the State Ethics Commission. Therefore, for purposes of the post-employment restrictions in Chapter 68, the date of termination from City service is the date a public servant effectively resigns and stops working for the City. It is the public servant's removal from the active payroll that triggers the imposition of the one-year appearance ban contained in Charter Section 2604(d)(2). The fact that the former public servant is receiving lagged paychecks or payment for unused leave does not alter or extend the date of termination from City service.

Accordingly, when a public servant resigns and is removed from the payroll, the then former public servant is subject to the one-year appearance ban contained in Charter Sections 2604(d)(2) and (d)(3).

The Board specifically notes, however, that public servants who are "on leave" from their positions for personal reasons, such as child care, are still considered public servants for purposes of Chapter 68, irrespective of the length of such leave. Even if public servants "on leave" from their City positions are not be getting paid by the City, they are nevertheless employees of their respective agencies; these public servants may return to City service at the end of their leave without reapplying for a job. All employees who are "on leave" are public servants, subject to all of the restrictions contained in Chapter 68.



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Dated: December 7, 1998