

OLMS Fact Sheet



Prohibition Against Certain Persons Holding Union Office or Employment

The Office of Labor-Management Standards (OLMS), U.S. Department of Labor, is responsible for administering and enforcing most of the provisions of the Labor-Management Reporting and Disclosure Act (LMRDA). The LMRDA was enacted primarily to ensure basic standards of democracy and fiscal responsibility in labor organizations with private sector members. OLMS also administers the Standards of Conduct provisions of the Civil Service Reform Act of 1978 (CSRA) and the Foreign Service Act of 1980 (FSA) relating to Federal employee organizations, which are comparable to LMRDA requirements.

Is it illegal for people who have been convicted of certain crimes to hold union office or employment?

Yes. Section 504 of the LMRDA prohibits individuals convicted of certain crimes from holding union office or employment or serving in other prohibited capacities. The prohibitions of Section 504 are incorporated into the federal sector Standards of Conduct provisions and, therefore, are applicable to federal employee unions, as well.

What union offices or positions can a convicted person not hold?

- Any officer or employee position such as president, vice-president, recording secretary, financial secretary, treasurer, director, trustee, executive board member, business agent, manager, organizer, or clerical employee;
- Any position as a representative in any capacity of a labor organization such as a job steward or shop committeeman;
- Any position, other than that of a member, involving decisionmaking authority concerning, or custody or control of, labor organization funds or assets; and
- Consultant or adviser to a labor organization.

What other positions can a convicted person not hold?

- Labor relations consultant or adviser to an employer, employer organization, or labor organization;
- Any position having specific collective bargaining authority or direct responsibility in the area of

labor-management relations in a corporation or association;

- Officer, director, agent, or employee of any group or association of employers dealing with any labor organization;
- Any position where the occupant is entitled to a share of the proceeds of any entity whose activities are in whole or substantial part devoted to providing goods and services to a labor organization; and
- Officer or executive or administrative employee of any entity whose activities are in whole or substantial part devoted to providing goods and services to a labor organization.

Are corporations and other convicted organizations barred from serving in prohibited capacities?

Yes. Organizations convicted of the crimes described in Section 504 are disqualified from serving in prohibited capacities. For example, a convicted consulting firm would be barred from doing business with a labor organization.

What are the crimes that result in a person being barred?

Conviction for several types of crimes will bar a person from serving in prohibited capacities, including but not limited to the following examples:

- Generic criminal offenses; specifically, murder, assault with intent to kill, assault that inflicts grievous bodily injury, rape, arson, extortion, burglary, grand larceny, robbery, bribery, embezzlement, or violation of narcotics laws;*
- Violations of Title II or Title III of the LMRDA, which include knowingly making a false statement of

material fact or failing to disclose a material fact in any labor organization report, labor organization officer or employee report, or other report required by the LMRDA; willfully failing to file a required report; willfully violating the record-keeping requirements in Title II or Title III; willfully making a false entry in labor organization records or other documents required to be kept by the LMRDA or willfully concealing, withholding or destroying such records; willfully and improperly transferring funds from a trustee local to the parent body imposing the trusteeship; or willfully counting the votes of delegates from a trustee local under certain circumstances;

- Any felony involving abuse or misuse of an individual's position or employment in a labor organization or employee benefit plan in order to seek or obtain an illegal gain at the expense of the members of the labor organization or the beneficiaries of the employee benefit plan;
- Conspiracy to commit any of the above crimes;
- Attempting to commit any of the above crimes;
- Any crime in which any of the above crimes is an element; or
- Any crime that is equivalent to the above crimes; for example, obtaining money by false pretenses in certain cases can be equivalent to the listed crimes of grand larceny or embezzlement.

Regarding federal sector unions, the prohibitions are also applicable to any person who has been convicted of, or who has served any part of a prison term resulting from his conviction for making a false statement, in violation of 18 U.S.C. 1001, in any report required to be filed pursuant to the federal sector Standards of Conduct provisions or who has been determined to have willfully violated such provisions prohibiting certain acts relating to a subordinate body under trusteeship, pursuant to 29 C.F.R. 458.27.

How does the bar apply to state convictions?

If a person is convicted of a state crime covered by Section 504, the person is subject to the Section 504 bar.

Is there a difference between a felony conviction and a misdemeanor conviction for purposes of the bar?

No. With the exception of the residual felony offenses involving abuse or misuse of a person's position or employment in a labor organization or employee benefit plan, anyone convicted of any of

the crimes described in Section 504 is barred, regardless of whether the crime is classified as a felony or misdemeanor.

Is the bar automatic or must a court impose it?

The bar applies automatically by operation of law. While a court may specifically impose an employment restriction as a condition of sentence, the court does not need to take action for the Section 504 bar to apply.

When does the bar start?

A person convicted of any of the above crimes is prohibited from holding office or serving in any other prohibited capacity beginning on the date of the judgment of conviction, regardless of whether the conviction is appealed.

What is a "judgment of conviction"?

For purposes of Section 504, a judgment of conviction includes a finding or plea of guilty, or an equivalent procedure, such as a plea of no contest to a disqualifying crime described in Section 504, and a sentence or other punitive disposition of the case by the trial court.

When does the bar end?

The bar ends 13 years after conviction or after the end of imprisonment, whichever is later.

Can the sentencing court reduce the period of the bar?

The federal or state sentencing court, on the motion of the convicted person, can set a shorter period of time, which cannot be less than three years following conviction or end of imprisonment, whichever is later.

Can the bar be removed?

A barred person may seek to have the bar removed to permit service in a particular prohibited capacity by clearly demonstrating to the court that:

- such person's service in one of the prohibited positions would not be contrary to the purposes of the LMRDA, and
- such person has been rehabilitated since commission of the disqualifying crime and can therefore be trusted not to endanger the organization in the position for which relief from the bar is sought.

What court hears the request to have the bar removed?

- The sentencing judge, if the person was convicted of a federal offense; or
- The United States District Court in the district in which the crime was committed, if the person was convicted of a state or local offense.

What role does the Department of Labor have?

- The court must notify the Secretary of Labor and state, county, and federal prosecuting officials in the jurisdiction where the barred person was convicted before holding a hearing on the request to remove the bar.
- The Department of Labor will investigate and make a recommendation to the court on whether the bar should be removed.
- For federal sector unions, the OLMS official designated in the regulations, or such other person as he may designate, may exempt a person from the prohibition from holding office or employment or may reduce the period of the prohibition if determined that it would not be contrary to the purposes of the CSRA or FSA.

Does the restoration of an individual's citizenship rights affect the bar?

If an individual's citizenship rights were revoked as a result of the conviction and are *fully* restored in the jurisdiction of conviction and in a manner which demonstrates rehabilitation of the individual since the offense, the bar is ended. But, if no citizenship rights were revoked as a result of the disqualifying conviction, the barred person must seek relief by one of the other methods of relief described in Section 504.

What are citizenship rights for purposes of Section 504 relief?

Citizenship rights that may be revoked and restored as the result of state criminal convictions generally include the rights of a state citizen in the jurisdiction of conviction to vote in public elections, to serve in public office, and to sit on a jury. A federally convicted offender may have any revoked citizenship rights fully restored by obtaining a pardon from the President of the United States.

What if an individual successfully appeals an otherwise disqualifying conviction?

The bar terminates if an appeal results in a reversal of the conviction.

Is parole considered part of imprisonment for purposes of determining the Section 504 bar period?

No. The 13-year period begins on the day the convicted individual is released from imprisonment. Thus, if a person is paroled after serving two years of a four-year sentence, for example, the 13-year

period begins upon his or her release from actual confinement in a jail-type facility.

What about probation?

Similar to parole, if an individual convicted of a disqualifying offense receives a suspended sentence and is placed on probationary supervision without any confinement in a jail-type facility, the 13-year period begins on the date of conviction rather than at the end of the suspended sentence or probation.

What happens if a suspended sentence, parole or probation is revoked by the convicting court as a result of the convicted person's bad behavior?

The 13-year period begins to run again from the end of any imprisonment that results from the revocation of the suspended sentence, parole, or probationary supervision.

Is it a violation if a person hires, retains, or employs a person subject to the bar?

Yes. It is a violation both for a barred person to willfully hold a prohibited position and for another person to willfully and knowingly hire, retain, employ, or otherwise place the barred person in a prohibited capacity. For example, if an individual is a union officer at the time he or she is convicted of a disqualifying offense, the union must take steps to prevent the barred individual from serving in a prohibited capacity. Failure of the union's other officers to do so if they have knowledge of the barred individual's employment disqualification and service in a prohibited capacity is a violation of Section 504 as well.

What happens to the salary of an individual subject to the 504 bar?

If an individual is barred from elective office or other position for which any salary would be otherwise due if that individual were not barred by virtue of a disqualifying conviction and the individual has appealed the disqualifying conviction, any salary which would be otherwise due the individual is placed in an escrow account. The payment of the salary into the escrow account shall continue during the appeal or while the salary would be otherwise due, whichever is the shorter period. If the conviction is reversed, the amount in escrow is paid to the individual. If the conviction is affirmed, the money in escrow is returned to the payer. However, employment at will or by contract that may be terminated, and does not result in compensation that is otherwise due the convicted person, is not covered by the escrow provision of Section 504.

What is the punishment for a willful violation of LMRDA Section 504?

The LMRDA makes a willful violation of any provision of Section 504 punishable by a fine of not more than \$10,000 or imprisonment for not more than five years, or both. However, per 18 U.S.C. 3571, the maximum fine has increased to the greatest amount of the fine described in Section 504, twice the gross pecuniary gain which the defendant derived from the Section 504 offense, twice the gross pecuniary loss resulting from the Section 504 offense of a person other than the defendant, or \$250,000. In the case of a disqualified organization,

a fine based on the greatest of the foregoing pecuniary gain or loss or \$500,000 may be imposed for a willful violation of Section 504.

Can a labor organization prevent an individual who is barred under Section 504 from running for union office?

Yes. A union has the right to impose reasonable candidacy qualifications, which may include, or even exceed, the requirements of Section 504.

What should I do if I think someone is holding a position in violation of Section 504?

Contact the nearest OLMS district office.

* Disqualifying crimes listed in Section 504 include “violation of narcotics laws.” The term “narcotic drug” as defined when Section 504 was enacted in 1959, and under current federal law, is restricted to heroin, cocaine, opium, their precursors or derivatives, and other opiates having an addictive quality similar to morphine. 21 U.S.C. § 802(17). Consequently, the Department of Justice considers a “violation of narcotic laws” to be those offenses involving controlled substances federally classified as “narcotic drugs.” The U.S. Drug Enforcement Administration’s Office of Diversion Control publishes on its website: <http://www.dea/diversion.usdoj.gov/schedules/index.html> a list of controlled substances, which explains whether a controlled substance is or is not a narcotic drug.

Office of Labor-Management Standards Field Offices

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For the address and telephone number of our field offices, please consult local telephone directory listings under United States Government, Labor Department, Office of Labor-Management Standards, or view our online organizational listing at <http://www.dol.gov/olms/contacts/lmskeyp.htm>.

OLMS

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