

# **OUTSIDE EMPLOYMENT GUIDANCE**

## **for**

# **DOL EMPLOYEES**

### **Seeking Outside Employment**

**Q: May I seek outside employment while on furlough during a shutdown?**

**A:** Yes, you can always seek outside employment.

**Q: When may I start to look for an outside job?**

**A:** Federal employees are permitted to seek outside jobs at any time (during a furlough, shutdown or otherwise). Once you have begun to seek outside employment, the ethics rules require you to disqualify yourself from official matters and assignments involving your prospective employer(s) and to continue to disqualify if hired. (5 CFR § 2635.604). In the event of a government shutdown, this disqualification requirement will be moot until official work resumes.

NOTE: Under the STOCK Act, members of the SES and noncareer employees (i.e., Public Financial Disclosure filers) would need to file a job negotiation notice within 3 days of initiation.

An outside entity becomes a “prospective employer” when:

- You express interest in working for them through in-person discussions or other correspondence, such as by submitting a resume or job application. Even informal conversations with representatives of outside entities will trigger the disqualification requirement once you discuss potential employment opportunities; or
- You are approached by an outside entity about a potential position and do not unconditionally terminate the discussion.
- Outside entities are no longer considered prospective employers once: (1) you terminate employment discussions, (2) they terminate employment discussions, or (3) two months elapse with no response since submitting your resume or job application.

## Accepting Outside Employment

**Q: As a federal employee, what types of outside employment may I accept?**

**A:** Federal employees are free to accept any outside employment, yet there are some ethics restrictions to keep in mind:

- An outside job must not conflict with your official position. A conflict will arise if the outside position relates so closely to your official position that it requires you to disqualify yourself routinely from official assignments to such a degree that it is detrimental to your hiring agency (5 CFR § 2635.802). For example, an OSHA inspector who provides private consulting services on workplace safety must ensure that he/she does not provide consulting services to those businesses that he would routinely inspect on behalf of OSHA. *While these considerations may not directly apply while on furlough or in the midst of a government shutdown, they will be applicable as soon as work resumes.*
- NOTE: Even if you only work temporarily, e.g., only during your furlough days, creating an employment relationship would require that you recuse from any official matter to which your temporary employer is a party or represents a party for one year following termination of that relationship. See 5 CFR § 2635.502.
- There are also criminal conflict of interest concerns that apply to all federal employees involved in outside work – both paid and unpaid. Under 18 USC § § 203 and 205, employees may not represent an outside person or business before a federal court or agency in a matter that (1) involves a federal party or (2) involves a matter of “substantial federal interest” (e.g., taxes, immigration, etc.). This means that you may not represent your outside employer before any federal entities through correspondence or in-person communications (for example, you should not sign correspondence that is directed to a federal agency on behalf of an outside employer).
- Another important consideration is misuse of your official position (see 5 CFR § 2635.702). Federal employees may not use their official position – such as their title or DOL affiliation – for their own private gain. When seeking outside employment while on furlough or during a government shutdown, be careful to avoid improperly using your official authority to obtain the position or to invoke it in performing duties for that position. Of course, you are permitted to include your federal experience in a resume or during a job interview.

- Employees may not use official time toward outside jobs. In the event of a shutdown or during a furlough, this will not be an issue. Please note that you similarly may not use your government computer or other resources in seeking or conducting activities related to an outside job at any time. See DLMS 9, Chapter 900.

**Q. I am an attorney – are there additional restrictions that apply to me?**

- A. All attorneys in the Office of the Solicitor, and anyone else in DOL with a law degree, who wish to engage in outside legal work (paid or unpaid) should review the SOL Pro Bono Guidance (attached). Attorneys must also consider their respective state Bar professional responsibility rules and should consult their Bar counsel where appropriate.

## **Continuing Outside Employment**

**Q. I would like to maintain my outside job part-time even after government work resumes. Is this permissible?**

- A. Yes. Federal employees may maintain outside jobs even under normal operating conditions.

Once federal operations resume, you are immediately required to disqualify yourself from any official assignments involving your outside employer for the duration of the outside position (18 USC § 208). For example, if you have an outside job with ABC Contracting, you may not attend agency meetings with ABC Contracting as part of your official duties.

## **Some Final Considerations**

- Prior approval by the employee's agency is not required, unless you work for the Office of the Inspector General. Employees are urged to seek ethics guidance to ensure they are in compliance with the rules explained in this guidance.
- Employees who are participating personally and substantially in a federal agency procurement and who contact or are contacted by an offeror in that procurement regarding possible outside employment must report the contact, and take appropriate steps, in accordance with Federal Acquisition Regulation 3.104-3 and

41 USC 2103. In the event of a shutdown or during a furlough, this will not be an issue. If this situation applies to you, you should contact your supervisor, your agency ethics official, and the Contracting Officer assigned to the procurement.

- Employees subject to the financial disclosure requirement would need to report any outside position and earned income on their next report.
- All senior career officials and all noncareer appointees (i.e., all Public Financial Disclosure filers) are required to file a STOCK Act notification and disqualification form (attached) within 3 days of entering into negotiations for employment with a nonfederal employer. If unable to send the form, send an e mail notification to either contact below within 3 days.
- Noncareer senior officials (those occupying positions classified above GS-15 of the General Schedule) are subject to an earned income cap and should consult with our office before accepting outside employment.

## **CONTACT INFORMATION**

**If you have additional questions about outside employment, please contact:**

**Vanessa Myers at 202-693-5702, [myers.vanessa.j@dol.gov](mailto:myers.vanessa.j@dol.gov).**

**If you are employed in as Regional Office, you may also contact your respective Regional Solicitor.**