

HR/LR Policy # 1445

Code of Ethical Conduct

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Statewide Operating Policy #0103-01)
Effective Date: 1/1/2022
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Authority: Minnesota Management and Budget
Enterprise Employee Resources &
Internal Control and Accountability

OVERVIEW

Policy Statement

Executive branch employees are held to the highest standard of honesty, integrity, and ethical behavior.

Executive branch employees have a duty to the people of Minnesota and must act in the public interest.

Every executive branch employee must comply with this Code of Ethical Conduct to:

- Ensure compliance with the Code of Ethics for Employees in the Executive Branch found in [M.S. 43A.38](#), and other applicable law
- Avoid any appearance of impropriety
- Maintain the public trust
- Ensure the use of state resources for state purposes
- Strengthen governance processes
- Increase accountability in state government

Employees who violate this policy may be subject to discipline, up to and including discharge. Violation of this policy also may be subject to criminal penalties as provided in M.S. 43A.39 and other law.

Scope

This policy applies to all employees in the executive branch of state government (as defined in M.S. 43A.02, subds. 2 & 22), including Minnesota State Retirement System, Public Employees Retirement Association, and Teachers Retirement Association.

Definitions and Key Terms

Key Term	Definitions
Business	Any company, corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual or any other legal entity which engages either in <u>nonprofit or profit-making activities</u> .
Confidential Information	Any information obtained under government authority which has not become part of the body of public information and which, if released prematurely or in non-summary form, may provide unfair economic advantage or adversely affect the competitive position of an individual or a business. "Confidential information" also includes data classified as not public under the Minnesota Government Data Practices Act, M.S.Ch.13.
Family	An employee's: current and former spouse; children, parents, and siblings; current and former children-in-law, parents-in-law, and siblings-in-law; current and former stepchildren and stepparents; grandchildren and grandparents; and members of the employee's household.
Fiduciary Responsibility	A legal or ethical duty of loyalty and trust in which the individual has an obligation to act for the benefit of or to safeguard the interests of another person or entity. Examples include but are not limited to: a trustee; a board member; an attorney.
Friend	A person with whom the employee has an ongoing personal social relationship. "Friend" does not generally include a person with whom the relationship is primarily professional or primarily based on the person being a current or former colleague. "Friend" does not include mere acquaintances (i.e., interactions are coincidental or relatively superficial). Social media friendships, connections, or links, by themselves, do not constitute friendship.
Nominal Value	Little or no marketable value.
Organization	Includes for-profit and nonprofit businesses and other entities. Organization does not include public entities.

Key Term	Definitions
Outside Interest	<p>The following persons or organizations the employee is associated with in their personal capacity (as opposed to state capacity):</p> <ul style="list-style-type: none"> • a person or organization that employs or is a prospective employer of the employee, their family, or their partner <ul style="list-style-type: none"> ○ as used here, employment includes acting as an officer, director, trustee, general partner, agent, attorney, representative, consultant, contractor, or employee • a person or organization that the employee, their family, or their partner has or is seeking a financial interest in or financial relationship with <ul style="list-style-type: none"> ○ routine consumer transactions are not considered a “financial interest” or “financial relationship” • any organization in which the employee, their family, or their partner are an active participant <ul style="list-style-type: none"> ○ “Active participation” includes but is not limited to: service as an officer; service in a capacity similar to that of a committee or subcommittee chairperson or spokesperson; participation in directing the activities of the organization; significant time devoted to promoting specific programs of the organization; coordination of fundraising efforts for the organization; active membership in the organization • “active membership” does not include active membership in job-related nonprofit professional organizations so long as other aspects of active participation are not present • payment of dues or donation of financial support to the organization does not, by itself, constitute “active participation”
Partner	Includes romantic and domestic partners and outside business partners.
Relative	Uncle or aunt; first or second cousin; godparent; godchild; other person related by blood, marriage, or legal action with whom the employee has a close personal relationship.
Private Gain/Private Interest	Any interest, including but not limited to a financial interest, which pertains to a person or business whereby the person or business would gain a benefit, privilege, exemption, or advantage from the action of a state agency or employee that is not available to the general public.

Key Term	Definitions
Obligated Officer	Per M.S. 3.971, “An ‘obligated officer’ means the organization’s: (1) chief executive officer (e.g. commissioner or executive director); (2) deputy and assistant chief executive officers (e.g. deputy or assistant commissioners); (3) chief administrative, chief financial, chief information, and chief investigative officers; (4) heads of divisions, bureaus, departments, institutes, or other organizational units; and (5) board chair, where applicable.”
Fraud	An intentional or deliberate act to take money or property from another person through deception or other unfair means. See M.S. 13.357. Fraud includes knowingly using false information or committing a crime in order to obtain money, a benefit, not public data, or services from the state to which the person is not legally entitled.

GENERAL STANDARDS AND EXPECTATIONS

Acceptance of Gifts

Employees may not directly or indirectly solicit, accept, or receive anything of value for performing their state job, except for the compensation and benefits provided by their employing agency and/or the state. They may not directly or indirectly solicit, accept, or receive any payment of expense, compensation, gift, reward, gratuity, favor, service, promise of future employment, or promise of a future benefit for activities related to their duties, except those provided by their employing agency and/or the state. Employees offered impermissible gifts must decline or return them to the giver; an employee who is unable to return the gift must contact the agency ethics officer to determine appropriate disposal.

The *limited exceptions* to the prohibition on the acceptance of gifts are as follows:

- Gifts of “nominal value.” Gifts of cash and gift certificates or gift cards of any value are prohibited. Some examples of gifts of “nominal value” include, but are not limited to:
 - Pens, cups, totes, or other trinkets bearing a company’s name/logo that do not have a marketable value.
 - Snacks or light refreshments provided at a meeting, conference or other event as a normal courtesy and offered to all attendees.
- Plaques or mementos recognizing individual service in a field of specialty or to a charitable cause.
- Payment or reimbursement of expenses for travel (including lodging and meals) that:
 - are not reimbursed by the employee’s agency and/or the state,
 - have been approved in advance by the employee’s agency,
 - are associated with a work assignment, and
 - which do not otherwise present a conflict of interest.
- Honoraria or expenses paid for papers, talks, demonstrations, or appearances which are:
 - made by employees on their own time, including vacation,
 - not part of their regular job duties, and

- which do not otherwise present a conflict of interest.
- Textbooks provided they meet the criteria of [M.S.15.43, subd. 2](#).
- Tips received by employees engaged in food service and room cleaning at restaurant and lodging facilities in Itasca State Park
- Special discounts or offers made by private businesses only as authorized by [HR/LR Policy #1332](#), Code of Ethics – Acceptance of Discounts Offered to Government Employees

Use of Confidential Information

Employees may not use confidential information obtained in the course of their state agency employment to further their private interest, or the private interest of any person or organization except as authorized by law.

Additionally, employees may not accept outside employment or involvement in a business or activity which requires them to disclose or use confidential information obtained in the course of their state agency employment.

Use of State Property or Time

Employees may not use or allow the use of state-paid time or state owned or leased facilities, supplies, equipment, or other property for their private interest, for the private interest of any person or organization, or any other use not in the interest of the state, except as authorized by law.

An exception is that an employee may use state time, property, or equipment to communicate electronically (*e.g.*, to elected officials or exclusive representatives) provided such use results in no additional charge to the agency, or a charge so small as to make accounting for it unreasonable or administratively impractical, and provided such use is in compliance with [HR/LR Policy #1423](#) Appropriate Use of Electronic Communication and Information Technology.

Other than the exceptions set forth in [HR/LR Policy #1423](#) Appropriate Use of Electronic Communication and Information Technology, there is no “nominal value” exception to the restrictions on the use of state property and time.

Conflict of Interest

Employees must avoid any action which might result in a conflict of interest. Conflicts of interest occur when a state employee’s personal interests or loyalties compete with or compromise their ability to faithfully fulfill their state responsibilities with objectivity, impartiality, good judgment, and loyalty to the state’s interests. Conflicts of interest include, but are not limited to, the following actions:

- Using or attempting to use the employee’s state position, including their badge, uniform, title, prestige, authority, or influence, for the private gain of the employee or the employee’s family, relatives, partners, friends, or outside interests. This prohibition includes using or attempting to use the employee’s state position to solicit or secure special benefits, privileges, or advantages that are not available to the general public for the employee or the employee’s family, relatives, partners, friends, or outside interests.
- Accepting or soliciting employment, a contractual relationship, or a fiduciary responsibility that will affect the employee’s independence of judgment in the exercise of the employee’s state duties.
- Accepting or soliciting employment, a contractual relationship, or a fiduciary responsibility with any person or public or private entity that is directly or indirectly subject to control, inspection, review, audit, or enforcement by the employee in their state position.
- Receiving or accepting any money or thing of value from anyone other than the state for performing an act which the employee would be required or expected to perform in the regular course or hours of their state employment or as part of their state duties.

- Performing an act in the employee's personal capacity which may later be subject directly or indirectly to the control, inspection, review, audit, or enforcement by the employee in their state position.
- Holding or seeking financial interests that conflict with the conscientious performance of the employee's state duties.
- Participating on behalf of the state in the development, review, or evaluation of requests for proposal ("RFP"), request for bid ("RFB"), or requests for information ("RFI"), or the selection, award, or administration of a contract or grant when the employee, their family, their partner, or any of the employee's outside interests has or is seeking a financial or other interest in, or has or may obtain a tangible personal benefit from, an organization that is likely to apply for, is considered for, or is selected for the contract or grant.
- Participating on behalf of the state in the development, review, or evaluation of RFPs, RFBs, or RFIs, or the selection, award, or administration of a contract or grant with respect to a non-state public entity when the employee, the employee's family or the employee's partner is an elected or appointed official of the non-state public entity.
- Acting as an agent or attorney in any action or matter pending before the employing agency and/or the state except in the proper discharge of official state duties or on the employee's own behalf.
- Competing with the state, or soliciting a financial agreement for the employee or other entity other than the state, where the state is currently engaged in providing a service or where the state has expressed an intention to engage in competition for providing a service, unless the state waives this conflict.

Employees must also avoid any action which might result in a potential conflict of interest or the appearance of a conflict of interest.

"Potential conflict of interest" means that the employee's own interests, the interests of the employee's family or partner, or the interests of any of the employee's outside interests could create an inappropriate influence on the employee's judgment in the exercise of their state duties if the employee is called on to make a decision or recommendation that would affect one or more of those interests.

"Appearance of a conflict of interest" means any situation that would cause a reasonable person, with knowledge of the relevant facts, to question whether the employee's personal interest, affiliation or relationship inappropriately influenced the employee's action in their state position, even though there may be no actual conflict of interest.

- NOTE: Nothing in this policy shall be construed to suggest that an employee should not participate in a matter because of their political, religious, or moral views.

There is no "nominal value" exception to conflict-of-interest restrictions. This means that an actual, potential, or apparent conflict of interest can exist even where the benefit, privilege, exemption, advantage, or financial interest in question is nominal. In addition, when an employee attempts to use their position for private gain or advantage, a conflict of interest exists even if the employee is not successful in obtaining the private gain or advantage.

It is the employee's responsibility to recognize and avoid actual, potential, and apparent conflict of interest situations. If an employee becomes aware of or is not sure if an actual, potential, or apparent conflict of interest exists, the employee must submit a request to the employee's supervisor in writing for a determination. The employee may use the Conflict-of-Interest Acknowledgement and Disclosure form linked in Forms below, an agency form, or any other written communication that includes sufficient information to disclose the actual, potential, or apparent conflict. The supervisor must confer with the agency human resources office or the agency's ethics officer to determine if an actual, potential, or apparent conflict exists. If further review is required, the agency may confer with the MMB State Ethics Officer for a final determination.

If there is a determination that an actual, potential, or apparent conflict of interest exists, the employee must avoid the situation giving rise to the actual, potential, or apparent conflict, and may be instructed not to pursue or to discontinue a

conflicting outside activity, unless the conflict is of the type that can be lawfully waived and the agency determines in its sole discretion that it is in the best interest of the agency to waive or seek a waiver of the conflict. While actual, potential, or apparent conflicts of interest sometimes can be resolved by assigning the matter to another employee who does not have a conflict, the agency has no obligation to do so if the agency determines, in its sole discretion, that such reassignment is not in the best interest of the agency.

Employees may be subject to discipline, up to and including discharge, for engaging in conduct that constitutes an actual, potential, or apparent conflict of interest, and for failing to disclose actual, potential, or apparent conflicts of interest.

The conflict-of-interest restrictions do not apply to any activity which is protected under the Public Employment Labor Relations Act and collective bargaining agreements, nor do they prevent a current or former employee from accepting employment with a labor organization representing employees so long as no additional actual, potential, or apparent conflict of interest exists.

Reporting Suspected Fraud

Agencies have an obligation to report suspected fraud and misuse of resources to:

- The Office of the Legislative Auditor (OLA). See responsibilities section below for more information.
- The Bureau of Criminal Apprehension's (BCA) Financial Crime and Fraud Section. See responsibilities section below for more information.
- The Department of Revenue (Revenue). See responsibilities section below for more information.

Each agency must establish, document, and maintain an agency-level policy or procedure for receiving and directing concerns about known or suspected fraud or the misuse of public money, other public resources, or government data. Staff of the agency must be made aware of the policy or procedure and have access to the document.

At a minimum, the policy or procedure must clearly address the following standards to ensure successful implementation:

- Ensure staff are made aware of the specific legal reporting requirements, including but not limited to M.S. 3.971, M.S. 15.0573, and the mandates within Executive Order 25-01 and Executive Order 25-10.
- Clearly identify staff positions or individuals within the agency who are responsible for receiving and processing internal reports to ensure the agency's reporting process complies with all applicable state and federal laws.
- Clearly identify staff positions or individuals within the agency who are responsible for making reports to external parties, such as the OLA, the BCA, and Revenue.
- Ensure that all data collected, maintained, or disseminated during the internal reporting and investigation process complies with the classification, access, and security requirements set forth in M.S. Chapter 13.

Non-Retaliation

Retaliation is strictly prohibited against any person who in good faith reports violations of this policy, significant internal control weaknesses, theft, embezzlement, fraud, misuse of public funds or property, or misuse within state programs, services, or financing. This shall include reports made in good faith to any government entity or law enforcement official, their agency, MMB, the Office of Legislative Auditor (OLA), the Bureau of Criminal Apprehension (BCA), Revenue, a legislator, a constitutional officer, or any governmental body. Retaliation is also strictly prohibited against any person who participates in an investigation of such reports.

Retaliation includes discharge, discipline, penalty, interference with, threat, restraint, coercion, or any conduct or communication designed to prevent a person from making reports or participating in an investigation. Any employee who is found to have engaged in retaliation in violation of this policy may be subject to disciplinary action, up to and including discharge. The disclosures protected under this policy and state law do not authorize the disclosure of data otherwise protected by law.

RESPONSIBILITIES

Employees

In addition to the responsibilities set forth in the sections above, all State of Minnesota executive branch employees must hold themselves to the highest ethical standards, through words and actions, by:

- Performing their job duties honestly and ethically
- Putting forth honest effort in the performance of their job duties
- Acting impartially in their state job and without giving preferential treatment to any private interest except as may be provided by law
- Complying with all laws, rules, regulations, policies, and procedures related to their job duties, including but not limited to this policy
- Accessing not public data and using confidential information only when their work assignment reasonably requires access and only for state business purposes
- Satisfying in good faith their obligations as citizens, including all just financial obligations, especially those (such as paying taxes) that are imposed by law
- Cooperating fully with internal, legislative, or external auditors, state or federal investigators, and law enforcement
- Reporting any suspected violations of this policy, significant internal control weaknesses, evidence of theft, embezzlement, or unlawful use of public funds or property through designated agency channels
- Reporting in writing to the OLA, the BCA, and Revenue if they suspect or discover evidence of theft, embezzlement, or unlawful use of public funds or property

Within 60 days of hire/rehire into state service, transfer/demotion/promotion to a different state agency, or upon promotion for the first time to a supervisory/managerial position, all employees must complete the Code of Ethical Conduct training in Enterprise Learning Management (ELM) OR complete agency-specific Code of Ethical Conduct training as specified by their agency.

All employees must complete the acknowledgment with conflicts of interest disclosure in ELM OR sign and submit the acknowledgement form. Agencies are responsible for the collection and retention of forms which should be readily accessible and verifiable.

Annually thereafter, all employees must recertify by, at minimum, completing the electronic acknowledgment with conflicts of interest disclosure in ELM OR signing and submitting the paper certification form. Employees must adhere to the statewide and agency requirements for completing training.

As provided in [HR/LR Policy #1401](#) Voting Leave and Other Election Topics, employees who run for elected public office must obtain a conflicts of interest opinion from Minnesota Management and Budget.

Agency Heads, Managers, Supervisors

- Comply with all employee responsibilities provided above, including completing Code of Ethical Conduct training in ELM and electronic acknowledgement with conflicts of interest disclosure
- Adopt, communicate, and enforce this policy
- Conduct conflicts checks for outside employment during background check process prior to hiring employees
- Model ethical behavior
- Establish an ethical tone and culture in the agency that promotes honesty and accountability
- Establish a culture that is conducive to preparing reliable information for decision-makers
- Establish and maintain an agency-specific conduct and ethics program that is consistent with this policy, including policies and procedures for compliance with this policy
- Annually, train employees on compliance with this policy and agency conduct and ethics policies and procedures
- Administer and support Code of Ethical Conduct training programs for employees so they are informed of professional standards, laws, regulations, internal controls, and ethical responsibilities relevant to their specific job position
- Assign an agency employee to act as the agency's ethics officer
- Upon receipt of reports from members of the public of alleged conflicts of interest, investigate or cooperate with MMB in investigating such reports; take any action to resolve conflicts of interest as directed by MMB, and report to MMB on actions taken within 10 calendar days (refer to [Minn. R. 3900.9500](#))
- Confer with agency human resources or the agency's ethics officer if an employee discloses an actual, potential, or apparent conflict of interest
- Determine the existence of actual, potential, and apparent conflicts of interest and direct action to resolve such conflicts, including as directed by MMB
- Establish mechanisms and communication channels for employees to report any suspected violations of this policy, internal control weaknesses, irregularities, or illegal conduct; inform and train employees on the mechanisms and communication channels
- Determine and follow the agency's process for investigating and resolving reports of suspected violations of this policy, internal control weaknesses, irregularities, or illegal conduct, including any additional required reporting
- Develop, maintain, and adhere to an effective internal control system compliant with MMB policies and standards; periodically assess the adequacy and effectiveness of the agency's internal control system
- The head of each state department, board, commission, office, or other agency must establish an agency-level policy or procedure to standardize the internal process for promptly directing employee or nonemployee concerns about fraud or the misuse of public money, other public resources, or government data to one or more of the obligated officers identified in M.S. 3.971, subdivision 9, or the OLA and BCA. The agency-level policy or procedure must be in writing and provided to agency employees
- Notify law enforcement and/or the OLA as required by law, rule, regulation, or policy, including but not limited to:
 - Report to the OLA in writing when there is probable cause to believe that a substantial violation of Minnesota Statutes Chapter 43A has occurred
 - Obligated officers must promptly notify the OLA when they obtain information indicating that public money or other public resources may have been used for an unlawful purpose, or when the officer obtains information indicating that government data classified by Minnesota Statutes Chapter 13 as not public may have been accessed by or provided to a person without lawful authorization
 - Report in writing to the OLA if evidence of theft, embezzlement, or unlawful use of public funds or property is discovered
- Report to the BCA Financial Crime and Fraud Section and Revenue when the agency obtains information indicating that public money or other public resources may have been used for an unlawful purpose.

Minnesota Management and Budget

- Assist agencies with interpretation and application of this policy, including assisting agencies to determine the existence of actual, potential, and apparent conflicts of interest
- Assign an MMB employee to act as the State Ethics Officer
- Upon receipt of reports from members of the public of alleged conflicts of interest concerning executive branch employees, investigate or direct the employee's appointing authority to investigate such reports (refer to [Minn. R. 3900.9500](#))
- Determine the existence of actual, potential, or apparent conflicts of interest that are brought to the attention of MMB or direct appointing authorities to determine their existence; as needed, direct appointing authorities to take action to resolve actual, potential, or apparent conflicts of interest
- Issue written opinions as determined by the MMB Commissioner
- Maintain this policy and corresponding resources
- Make modifications to this policy as determined in MMB's sole discretion
- Periodically update the ELM Code of Ethical Conduct training, electronic acknowledgement, and paper certification forms

RELATED LAWS, POLICIES, AND PROCEDURES

In addition to complying with this policy, employees are responsible to review and comply with the requirements of the following, as applicable. Failure to comply with the requirements of the following, if applicable, may be subject to discipline, up to and including discharge, and may be subject to criminal penalty:

- [2 C.F.R. 200.318\(c\)\(1\)](#)—Federal Funds Conflicts of Interest Standards
- [M.S. 3.971, subd. 9](#)—Obligation to Notify the OLA
- [M.S. 10.47](#) – Obligation to report long distance telephone misuse
- [M.S. 10A.07](#)—Conflicts of Interest for Public Officials
- [M.S. Chapter 13](#) – Government Data Practices
- [M.S. 13.357, subd. 3](#) – Data disclosure rights related to evidence of suspected or confirmed fraud
- [Executive Order 25-01](#) – BCA reporting requirements for fraud prevention
- [Executive Order 25-10](#) – Reinforces mandatory referrals of suspected fraud to the BCA and OLA
- [M.S. 15.013, subd. 3](#) – Classifies fraud evidence data as not public
- [M.S. 299C.061](#) – Data sharing with the BCA Financial Crimes and Fraud Section
- [M.S. 15.054](#)—Sale or Purchase of State Property; Penalty
- [M.S. 15.0573](#) – Fraud reporting requirements
- [M.S. 15.43](#) – Acceptance of Advantage by State Employee; Penalty
- [M.S. 15.435](#) – Airline Travel Credit
- [M.S. 16A.139](#) – Misappropriation of Money
- [M.S. 16A.17, subd. 8](#)—Preparation of State Payroll—payment to be made only for hours worked except per collective bargaining agreement, compensation plan, or to resolve labor or legal grievance
- [M.S. 16B.98](#) – Ethical Practices and Conflict of Interest (Grants)
- [M.S. 16C.04](#) – Ethical Practices and Conflict of Interest (Procurement)
- [M.S. 43A.32](#) – Political Activities
- [M.S. 43A.38](#) – Code of Ethics for Employees in the Executive Branch

- [M.S. 43A.39, subd. 2](#) – Compliance with Law (appointing authority duty to report to OLA if probable cause of substantial violation of MS Chapter 43A)
- [M.S. 211B.09](#)—Prohibited Public Employee Activities
- [M.S. 609.42](#)—Bribery
- [M.S. 609.43](#)—Misconduct of Public Officer or Employee
- [M.S. 609.456, subd. 2](#) – Reporting to Legislative Auditor Required
- [Minn. R. 3900.9500](#) –Reporting and Investigating Conflict of Interest
- [MMB Administrative Procedure 32](#) – Political Activities of State Employees
- [HR/LR Policy #1332](#) – Acceptance of Discounts Offered to Government Employees
- [HR/LR Policy #1339](#) – Meeting Planners Exemption
- [HR/LR Policy #1393](#) – Solicitations
- [HR/LR General Memo 2015-5](#), Code of Ethics Q&A
- [HR/LR Policy #1401](#) – Voting Leave and Other Election Topics
- [HR/LR Policy #1423](#) – Appropriate Use of Electronic Communication and Information Technology
- [MMB Statewide Policy #0102-01](#) – Internal Control System
- [MMB Statewide Policy #0102-03](#) – Federal Whistleblower Protection Policy
- [Department of Administration Office of Grants Management](#) – Conflict of Interest Policy for State Grant-Making
- [Department of Administration -Office of State Procurement Ethics and Conflicts of Interest](#)
- [Department of Administration Procurement Code of Ethics Policy -- 21-02](#)
- [Department of Administration Organizational Conflict of Interest Policy 01-13](#)

FORMS

- [Code of Ethical Conduct Acknowledgment and Disclosure Form](#)
- [Political Activity Opinion Request Form](#)
- [OLA Allegation Reporting Form](#)

CONTACT

State Ethics Officer

MMB Enterprise Employee Resources

MMB Internal Control & Accountability