

HR/LR Memo #2015-5

## Code of Ethical Conduct FAQs

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**Authority:** Enterprise Employee Resources and  
Internal Control and Accountability

### GENERAL GUIDANCE AND INFORMATION

This general memo should be reviewed with the statewide policy, [HR/LR Policy # 1445](#) Code of Ethical Conduct, and with [M.S. 43A.38](#) Code of Ethics for Executive Branch Employees. This general memo provides guidance and answers to frequently asked questions to help employees avoid ethical conflicts.

#### 1. What does "related to . . . work duties" mean?

[M.S. 43A.38](#) defines "related to . . . work duties" as, "the performance of an act which the employee would be required or expected to perform in the regular course or hours of state employment or as part of the duties as an employee." Employees should direct questions about their work duties to their supervisor or agency Human Resources office.

#### 2. If an employee discusses potential employment with an organization they regulate as part of their work duties, at what point should the employee disclose the potential 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. A conflict of interest exists when an employee accepts or solicits employment that will affect the employee's independence of judgment, or accepts or solicits employment with any person or public or private entity that is directly or even indirectly subject to the employee's control, inspection, review, audit, or enforcement in their state position.

In the situation involved in this question, even if they do not discuss topics related to the employee's state work, the employee's actions to solicit or accept employment with the organization creates an appearance of impropriety—specifically the appearance that the employee's actions or decisions with respect to the organization will be influenced by a potential future personal relationship with the organization—and undermines the public's confidence in state government. The employee must disclose the situation at the first occurrence of any employment discussions with the organization. The employee may need to be removed from any work duties that affect or involve the organization until the conflict of interest is resolved.

#### 3. Can employees get paid for other work while on paid leave time (e.g., vacation or compensatory time or a floating holiday) or on weekends?

Yes, provided the outside work the employee performs is not part of their regular job duties as a state employee or activity that they would be required or expected to perform in the regular course or hours of their state employment or as part of their state duties. In addition, the outside work cannot present a conflict of interest.

While on paid leave time (e.g., vacation or compensatory time or a floating holiday) or on weekends, employees cannot:

- accept or solicit outside employment that will affect the employee's independence of judgment in their state duties.
- accept or solicit outside employment with any person or entity that is directly or indirectly subject to the employee's control, inspection, review, audit, or enforcement in their state position.
- engage in outside employment that involves activity which may later be subject directly or indirectly to the employee's control, inspection, review, audit, or enforcement in their state position.
- engage in outside employment that involves the employee acting as an agent or attorney in any action or matter pending before the employee's agency.
- engage in outside employment in competition with the state where the state is currently engaged in providing the same service or where the state has expressed an intention to engage in competition for providing the same service, unless the affected state agency waives the conflict.
- accept outside employment which requires them to disclose or use confidential information obtained in the course of their state job.
- use any state-paid work time or state property to conduct their outside work activities.

#### **4. Can employees receive an honorarium for giving a speech or making a presentation?**

If the speech or presentation is part of an employee's work duties and done on state time, the employee cannot receive an honorarium.

If the speech is part of the employee's work duties but performed outside of the employee's normal work hours and is authorized by the employee's supervisor, the employee may be eligible for overtime or compensatory time or an honorarium. Employees should check with their supervisor or agency ethics officer prior to accepting an honorarium.

If the speech or presentation is not part of an employee's work duties and is given on their own time and without the use of state resources, the employee may accept an honorarium.

#### **5. An employee is speaking on behalf of the employee's agency at an all-day conference put on by an outside organization. Can the employee accept a free lunch provided by the organization to the speakers at the conference?**

Under [M.S. 43A.38](#), subd. 2(c), employees are permitted to accept, from an outside source, payment of reimbursement expenses for travel or meals, so long as: 1) the reimbursement does not exceed the actual expenses incurred; 2) the expenses are not also reimbursed by the state; 3) the expenses are incurred as part of the work assignment; and 4) the expenses have been approved in advance by the employee's appointing authority. Since the statute permits reimbursement for expenses for travel or meals, employees are not required to be in travel status to accept meal reimbursement under this provision. Employees may receive the actual meal that is offered directly rather than through a reimbursement, as long as the meal is part of the work assignment, not reimbursed by the state, and approved in advance by the appointing authority. In addition, there must be no conflict of interest between the employee and the organization providing the meal.

#### **6. Can an employee accept a thank you gift as appreciation for the work they performed as a state employee?**

Generally, no. 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. Employees

may accept gifts of “nominal value” such as pens, cups, totes, flash drives or other trinkets bearing a company’s name/logo that do not have a marketable value, or a plaque or memento recognizing individual service in a field of specialty or to a charitable cause. Gifts of cash and gift certificates or gift cards of any value are prohibited.

## **7. Can an employee serve as a paid member of a board or be paid to teach a course?**

Yes, as long as the board service or teaching:

- does not present a conflict of interest,
- is not a required or expected responsibility of the employee’s state job, and
- is on the employee’s own time.

Please also refer to answers on outside employment, as applicable to this question. It is recommended that employees seek advice from their supervisor, agency ethics officer, or agency human resources office if they have any questions about whether a conflict exists.

Even with no conflict of interest, employees must ensure they do not:

- use any state property or resources for the board service or teaching;
- disclose any agency confidential information in their service to the board or teaching;
- use any agency confidential information for the benefit of board or the entity for which they are teaching; or
- allow the board or entity for which they are teaching to use the employee’s state agency position or association with the agency for the benefit of the board or the entity for which they are teaching.

## **8. Can an employee set up a consulting business in a field similar to the employee’s state work duties?**

Generally yes, as long as the employee avoids any action which might result in a conflict of interest. However, before moving forward, the employee should disclose the opportunity and obtain a review by the agency’s ethics officer.

## **9. Can an employee promote their private business or organization at their state agency or work site?**

No, employees may not use or allow the use of state-paid work 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. Employees are prohibited from using or attempting to use their state position to solicit or secure for the employee or their family, relatives, partners, friends, or outside interests’ any special benefits, privileges, or advantages that are not available to the general public. However, employees may use promotional avenues which are available to the general public such as public bulletin boards, as long as they do not refer to or use their state position to promote their private interests.

## **10. Can employees solicit gifts or contributions from private businesses for employee special events?**

No, this is using state employment to secure benefits or privileges not available to the general public. A business could perceive this type of solicitation as undue pressure. They might construe the solicitation as a requirement to do business with the state, even if you make attempts to ensure that the business makes the gift voluntarily.

### **11.Can employees accept a door prize at a conference that is raffled off through random selection?**

It depends on the specific circumstances. Generally, state laws on gambling prohibit acceptance of such prizes, even if random, unless the drawing is open to the general public who have not paid a fee, or the conference or event is free.

### **12.Can managers and supervisors give gifts to employees in celebration of holidays or birthdays?**

Yes, if the gifts are of de minimis value. Examples may include small gifts of baked goods, candy, or trinkets. Gifts of cash and gift certificates or gift cards of any value are prohibited.

### **13.Can employees give each other gifts to celebrate major life events, such as contributions to a shared gift to an employee from coworkers for a retirement or baby shower?**

Yes, voluntary contributions to gifts in celebration of a coworker's life event are permitted. Even though receipt of a gift card is usually prohibited since it is a gift of more than nominal value, gift cards that are given by coworkers, including subordinates, in recognition of a special and infrequently occurring occasion of personal significance, like a retirement, a major illness, a baby, or a wedding gift, are acceptable under this policy.

### **14.Are cash application/electronic fund transfers considered "cash" under the policy?**

Yes.

### **15.Can employees help their family members and friends obtain employment at state agencies?**

Employees cannot use or attempt to use their state position for the private gain of the employee or the employee's family, relatives, partners, friends, or outside interests. Employees can provide family and friends with general publicly known advice about job seeking but cannot use their position to give family and friends a competitive advantage in the hiring process that would not be generally available to other applicants.

### **16.What should employees do if they are unsure whether a conflict of interest exists or if they have any questions about any activities that may fall under this policy?**

- Review [HR/LR Policy # 1445 Code of Ethical Conduct](#).
- Review the Code of Ethics for Executive Branch Employees at [M.S. 43A.38](#).
- Ask for help in clarifying the situation. Employees should direct questions to their supervisor, agency human resources office, or agency ethics officer, and avoid engaging in the activities until after receiving guidance that engaging in the activities is permitted under the policy.
- If the employee believes that there may be an actual, potential, or apparent conflict of interest, the employee must submit a written request for a determination to their supervisor. The supervisor should work with the agency's ethics officer or human resources office, who may consult with Minnesota Management and Budget.

## 17. What happens if an agency or Minnesota Management and Budget determines that an employee has a conflict of interest?

Outcomes will depend on the specific facts presented. Outcomes may include:

- an instruction that the employee not pursue the activity;
- reassignment to avoid the conflict; or
- continuing with the assignment if the interested parties are notified.

## 18. How should agencies conduct conflicts checks during the background check process prior to hiring employees?

As part of the hiring process, agencies must conduct a conflicts check for finalists for employment. Agencies must complete the conflicts check during the background check process after a contingent job offer is made to the finalist, but before the job offer is finalized. Other than in exceptional circumstances, the finalist for employment must resolve conflicts that are not waived before beginning employment. In the rare circumstance where the agency allows the conflict to be resolved after employment starts, the employee must be walled off from the conflicting activity until the conflict is resolved, unless it is a situation where the conflict can be lawfully temporarily waived, and all waiver procedures are followed. Failure to resolve conflicts may result in the revocation of the job offer or, if the employee was permitted to begin employment before resolving the conflict, failure to resolve the conflict may result in separation from employment.

## REFERENCES

[M.S. 43A.38](#) Code of Ethics for Employees in the Executive Branch

[HR/LR Policy # 1445](#) Code of Ethical Conduct

## CONTACTS

State Ethics Officer

MMB Enterprise Employee Resources

MMB Internal Control and Accountability