Ethics in Public Service
RCW 42.52

New employee orientation

OVERVIEW OF THE LAW

RCW 42.52.020
Activities Incompatible with Public Service

The Law

> No state officer or state employee may have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of any nature, that is in conflict with the proper discharge of the state officer's or state employee's official duties.

What is an **Incompatible Activity**?

Answer: Any activity that you perform with anyone you **regulate** or **contract with** in your official capacity. This activity includes any outside employment, a volunteer activity, ownership of a private business or any private activity, relationship, business, etc. that would impair/conflict with your ability to make decisions on behalf of the state.

An interest need not be financial to create a conflict of interest. According to the law, even a chance or thought of a conflict of interest is enough for a violation—no tangible outcome is needed.

If there could be a perceived violation, you need to step out of the situation totally. Talk to your supervisor and have yourself removed from any decision making authority or influence in that case.

Some conflicts of interest are clearly defined in the state's ethics law. These are:

- Owing a private business, then hiring someone you supervise, regulate in another way or contract with to work for you in your private business.
- Accepting a payment, a gratuity, or a reward from someone else who has an interest in a contract, sale, lease, purchase or grant under your authority or supervision.
- Acting in a state matter or transaction involving a business or organization in which you own an interest, or an entity in which you serve as an officer, agent, employee, or member.

- Assisting other persons, or sharing in compensation, in transactions involving the state when you had responsibility for these transactions as a state officer.

How do you deal with a conflict?

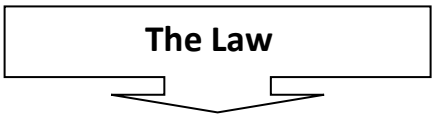
Most conflict of interest issues can be resolved easily and without resort to more drastic measures such as removal from position or resignation. The resolution of conflicts depends on *disclosure* and *removing yourself from the conflict*.

You can:

- Abstain. Don't participate in the activity.
- Disclose. Tell your supervisor about the potential conflict and let them decide whether to remove you from the activity.
- Review written procedures. Determine if your agency has a policy regarding how to handle conflicts of interest and follow that policy.
- Obtain screening memo. Have your work center write a memorandum outlining the conflicts and telling everyone that you are to be screened from specific information or decision-making regarding that particular transaction.

To avoid a conflict, you cannot merely delegate the activity to a subordinate.

RCW 42.52.030
Financial Interests in Transactions



(1) No state officer or state employee, except as provided in subsection (2) of this section, may have a beneficial interest in a contract, sale, lease, purchase, or grant that may be made by, through, or is under the supervision of the officer or employee, in whole or in part, or accept, , any compensation, gratuity, or reward from any other person who has a beneficial interest in the contract, sale, lease, purchase, or grant.

(2) No state officer or state employee may participate in a transaction involving the state in his or her official capacity with a person of which the officer or employee is an officer, agent, employee, or member, or in which the officer or employee owns a beneficial interest,

This law prohibits state employees from participating in a state transaction if they have a financial or other interest in the transaction.

What is a financial interest in a transaction?

- When you have an ownership interest in a contract that is made by you, through you, or by an employee you supervise – for example your spouse is contracting with your state agency or you own a part of the business that is contracting with your agency; OR

- When you receive compensation from any other person beneficially interested in a contract made by you, through you, or by an employee you supervise.

If a decision you are about to make puts money into your pocket or those of friends, family or other persons including a business entity of which you are a partner, board member, managing officer, or employee, that constitutes private benefit and you cannot do it.

You are also prohibited from accepting—directly or indirectly—any compensation, gift, or reward from any person who gets a benefit in terms of a contract, sale, lease, purchase or grant.

What does "Participate" and "Transaction" mean?

"Participation" must be both personal and substantial. However, the term is broadly defined and includes, but is not limited to approval, disapproval, decision, recommendation, the rendering of advice, or investigation.

"Transaction" is also broadly defined and includes a proceeding, application, submission, request for a ruling or other determination, contract, claim, case, or other similar matter that you believe, or have reason to believe:

(i) Is, or will be, the subject of state action; or
(ii) Is one to which the state is or will be a party; or
(iii) Is one in which the state has a direct and substantial proprietary interest.

RCW 42.52.050
Confidential Information

The Law

No state officer or state employee may accept employment or engage in any business or professional activity that the officer or employee might reasonably expect would require or induce him or her to make an unauthorized disclosure of confidential information

acquired by the official or employee by reason of the official's or employee's official position.

No state officer or state employee may make a disclosure of confidential information gained by reason of the officer's or employee's official position or otherwise use the information for his or her personal gain or benefit or the gain or benefit of another, unless the disclosure has been authorized by statute or by the terms of a contract involving (a) the state officer's or state employee's agency and (b) the person or persons who have authority to waive the confidentiality of the information.

No state officer or state employee may disclose confidential information to any person not entitled or authorized to receive the information.

No state officer or state employee may intentionally conceal a record if the officer or employee knew the record was required to be released under chapter 42.56 RCW, was under a personal obligation to release the record, and failed to do so

What does this mean?

No state employee may disclose confidential information gained through their job, or otherwise use confidential information for personal gain or benefit.

What is "confidential information"?

Information that is confidential is not releasable upon public demand such as:

- Personal information in employee, appointees or elected officials files that, if disclosed, would violate that person's right to privacy.
- Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination.
- All applications for public employment or contracting, including the names of the applicants, resumes, and other related materials.
- The residential addresses and residential telephone numbers of employees or volunteers of a state agency which are held in personnel records, employment or volunteer rosters, or mailing lists.

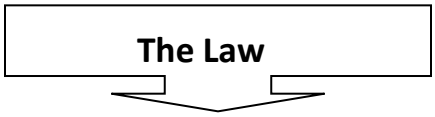
RCW 42.52.070
Special Privileges

Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons.

What does this mean? It means that a state employee may not use their position to give or get secure special privileges or exemptions for themselves, or their spouse, child, parent, or other person.

If you are a supervisor, this means you cannot use your supervisory authority to exempt a subordinate from the ethics law if what they are doing is against the law as it is written. For example, if a subordinate asks you if they can use state e-mail to give and receive client orders for their private business and you say yes, you just gave that person a special privilege or exemption from the Ethics Law. What you did was not fair and not legal.

RCW 42.52.080
Employment after Public Service



No former state officer or state employee may, within a period of one year from the date of termination of state employment, accept employment or receive compensation from an employer if:

(a) The officer or employee, during the two years immediately preceding termination of state employment, was engaged in the negotiation or administration on behalf of the state or agency of one or more contracts with that employer and was in a position to make discretionary decisions affecting the outcome of such negotiation or the nature of such administration;

(b) Such a contract or contracts have a total value of more than ten thousand dollars; and

(c) The duties of the employment with the employer or the activities for which the compensation would be received include fulfilling or implementing, in whole or in part, the provisions of such a contract or contracts or include the supervision or control of actions taken to fulfill or implement, in whole or in part, the provisions of such a contract or contracts. This subsection shall not be construed to prohibit a state officer or state employee from accepting employment with a state employee organization.

(2) No person who has served as a state officer or state employee may, within a period of two years following the termination of state employment, have a beneficial interest in a contract or grant that was expressly authorized or funded by specific legislative or executive action in which the former state officer or state employee participated.

(3) No former state officer or state employee may accept an offer of employment or receive compensation from an employer if the officer or employee knows or has reason to believe that the offer of employment or compensation was intended, in whole or in part, directly or indirectly, to influence the officer or employee or as compensation or reward for the performance or nonperformance of a duty by the officer or employee during the course of state employment.

(4) No former state officer or state employee may accept an offer of employment or receive compensation from an employer if the circumstances would lead a reasonable person to believe the offer has been made, or compensation given, for the purpose of influencing the performance or nonperformance of duties by the officer or employee during the course of state employment.

(5)No former state officer or state employee may at any time subsequent to his or her state employment assist another person, whether or not for compensation, in any transaction involving the state in which the former state officer or state employee at any time participated during state employment. This subsection shall not be construed to prohibit any employee or officer of a state employee organization from rendering assistance to state officers or state employees in the course of employee organization business.

What does this mean?

Post-State employment restrictions are designed to ensure that a former state employee does not accrue advantage as a result of decisions or actions made while in public service. Post-state employment restrictions USUALLY fall into one of two categories:

- a contract restriction
- continuing restrictions

Contract Restriction: Contract restriction applies only to those state employees who were involved in the negotiation or administration of agency contracts. The restriction under RCW 42.52.080(1) prohibits a former state officer or employee from accepting employment or receiving compensation from an employer for one year if:

The employee was in negotiation or administration of contracts or had any discretionary authority to make decisions with regards to the post-state employer's contract when he/she was a state employee; and,

The contract or contracts have a total value of more than $10,000; and,

The job duties the former state employee has been hired to fulfill by the post-state employer are, in whole or in part, due to the contract created while a state employee or include supervision or control of the state contract he/she negotiated or administered when with the state.

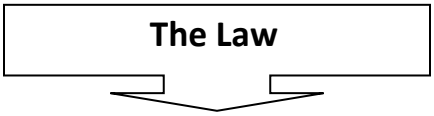
Continuing Restrictions: Some post-state restrictions have no time limit on them. This means that they are on-going restrictions that don't end. **Ever.** The following activities are restricted continuously:

- Accepting an offer of post-state employment if the state employee knows or has reason to believe that the offer was intended to influence or reward him/her for the performance or nonperformance of an official duty during state employment.

- Accepting an offer of post-state employment if circumstances would lead a reasonable person to believe the offer was made to influence the state employee during state employment. This is the same as above, except it focuses on the perceptions of others—the "reasonable person" standard—not on the employee's perceptions.

- Assisting in any transaction involving the state in which the former state employee, at any time while fulfilling former state duties, participated. Once you participated in a transaction or supervised the team that participated in a transaction, you cannot give advice or switch sides and assist the outside interest on that same transaction—even if you now work for that outside interest.

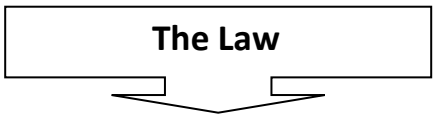
RCW 42.52.150
Gifts



No state officer or state employee may receive, accept, take, seek, or solicit, directly or indirectly, any thing of economic value as a gift, gratuity, or favor from a person if it

could be reasonably expected that the gift, gratuity, or favor would influence the vote, action, or judgment of the officer or employee, or be considered as part of a reward for action or inaction.

BUT WAIT…THERE'S MORE…



No state officer or state employee may accept gifts with an aggregate value in excess of one hundred dollars from a single source in a calendar year or a single gift from multiple sources with a value in excess of fifty dollars.

Single source means any person, as defined in RCW 42.52.010, whether acting directly or through any agent or other intermediary, and "single gift" includes any event, item, or group of items used in conjunction with each other or any trip including transportation, lodging, and attendant costs, not excluded from the definition of gift under RCW 42.52.150.

The value of gifts given to an officer's or employee's family member or guest shall be attributed to the official or employee for the purpose of determining whether the limit has been exceeded, unless an independent business, family, or social relationship exists between the donor and the family member or guest.

A state employee is restricted from accepting a gift if the gift is worth more than $100 and/or the gift giver is someone you regulate or contract with.

First, is everything I get for free considered a gift??

No – there are many things that the law does not consider to be "gifts" – for example:

- Items from family members where it is clear that the gift was not made as part of any effort to gain or maintain influence in the agency of which the recipient is an employee.
- Items related to the outside business of the recipient which are customary and not related to the recipient's performance of official duties.
- Items exchanged among employees, or a social event hosted by a state employee for co-workers.
- Items a state employee is authorized by law to accept.
- Items returned by the recipient to the donor within 30 days of receipt or donated to a charitable organization within 30 days of receipt.
- Campaign contributions reported under 42.17 RCW.

- Discounts available to an individual as a member of an employee group, occupation, or similar broad-based group.
- Awards, prizes, scholarships, or other items provided in recognition or academic/ scientific achievement.
- Payments by an entity of reasonable expenses incurred in connection with a speech, presentation, appearance or trade mission made in an official capacity.
- Payments of enrollment and course fees and reasonable travel expenses attributable to attending seminars and educational programs sponsored by a bona fide nonprofit professional, educational, or trade association or charitable institution.

If I don't regulate or contract with the gift giver – what can I accept?

- Unsolicited flowers, plants and floral arrangements.
- Unsolicited advertising or promotional items of nominal value.
- Unsolicited tokens or awards of appreciation—plaques, trophies, desk items.
- Unsolicited items for the purpose of evaluation or review, if the officer or employee has no personal beneficial interest in the use or acquisition of the item by the agency.
- Informational material, publications, or subscriptions related to official duties.
- Food and beverages at hosted receptions where attendance is related to official duties.
- Admission to and the cost of food and beverages consumed at events sponsored by or in conjunction with a civic charitable, governmental or community organization.
- Unsolicited gifts from dignitaries in another state or a foreign country intended to be personal in nature.
- Food and beverages on infrequent occasions in the ordinary course of state business.

How do I know if I do regulate or contract with the gift giver? If your duties include regulating people or organizations or members of an industry and/or you contract with the entity or individual wanting to give you the gift, then the restrictions in RCW 42.52.150(6) apply to gifts from those folks. These restrictions apply to gifts from any potential future contractor or vendor as well. These restrictions are commonly referred to as "Section 6" Employee gift limitations because of the section of law they fall under.

If you are in a "Section 6" relationship with the gift giver, the only gifts you can accept are:

- Unsolicited advertising or promotional items of nominal value.
- Unsolicited tokens or awards of appreciation—plaques, trophies, desk items.
- Unsolicited items received for the purpose of evaluation or review, if the officer or employee has no personal beneficial interest in the use or acquisition of the item by the agency.
- Informational material, publications, or subscriptions related to official duties.

- Food and beverages at hosted receptions where attendance is related to official duties.
- Admission to and the cost of food and beverages consumed at events sponsored by or in conjunction with a civic charitable, governmental or community organization.

Note: "Section 6" employees cannot accept any food or drink—not even a doughnut—offered by a person you regulate or who wishes to do business with you, e.g., any current or potential future contractor or vendor, in the ordinary course of state business.

RCW 42.52.160
Use of State resources

The Law

No state officer or state employee may employ or use any person, money, or property under the officer's or employee's official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee, or another.

Agencies may adopt policies that are stricter than the law. Review and understand your agency's use of resource policy to make sure you do not violate your internal policies.

The Executive Ethics Board has adopted guidelines for exceptions to the no personal use standard under RCW 42.52.160(1). A state officer or employee may make an occasional but limited personal use of state resources only if each of the following conditions are met:

- There is little or no cost to the state;
- Any use is brief;
- Any use occurs infrequently;
- The use does not interfere with the performance of any officer's or employee's official duties; and
- The use does not compromise the security or integrity of state property, information, or software.

What does "brief" and "infrequent" mean?

This means that *occasional* local telephone calls for medical and dental appointments, child or elder care arrangements, transportation coordination, etc., are acceptable. This means that *occasional and brief* personal e-mail messages and Internet use are acceptable. This *does not* mean state resources can be used for any purpose, other than those indicated above, during break periods.