

STATE ETHICS COMMISSION

MANDATORY EDUCATION AND TRAINING REQUIREMENTS IMPLEMENTATION PROCEDURES

Introduction. Chapter 28 of the Acts of 2009, the recently enacted ethics reform law, imposes new mandatory education and training requirements on public employers and public employees. The law authorizes the Commission to establish procedures to implement and ensure compliance with these requirements, and these Implementation Procedures are issued pursuant to that authority. The new requirements can be summarized as follows: Every state, county, and municipal employee must be given a summary of the conflict of interest law prepared by the Ethics Commission and must complete an online training program prepared by the Commission. Every municipality must designate a liaison to the Commission. All records of compliance with these requirements must be retained for 6 years. These new requirements apply to all public employees, as defined by the conflict of interest law and described below, except that these procedures establish exemptions from the online training requirement for certain categories of employees (see Section 2.a. below). These requirements also apply to regional public entities, as discussed below.

Questions, comments and suggestions. The Commission is committed to working with those affected by the law to implement it as efficiently as possible. Questions about these procedures may be directed to the Commission's Legal Division by calling (617) 351-9500, or submitted electronically on this website. In addition, the Commission invites suggestions for improvements to these procedures. Such suggestions may be made to David Giannotti, the Commission's Chief of the Public Education and Communications Division at the following e-mail address: dgiannotti@eth.state.ma.us.

Who is considered a public employee? The statutory definitions of who is a state, county, and municipal employee for purposes of the conflict of interest law are very broad. These definitions are not limited to paid, full-time public employees. Everyone who performs services for, or holds an office or position with, a state, county, or municipal agency is subject to the conflict of interest law. This is true whether the person is paid or unpaid, is a volunteer, works part-time, is employed only for part of the year or on a seasonal basis, or is a "special" employee. The law applies to these individuals, regardless of whether the employee is elected, appointed, or working under a contract.

In certain limited circumstances, an employee of a private firm may also be a public employee for purposes of the conflict of interest law and the new training and education requirements. If a public agency contracts for the personal services of a particular individual employed by a private firm, then the particular employee is a public employee for purposes of the conflict of interest law. For example, if a public agency hires a real estate consulting firm to provide development services, and the contract specifies that a particular partner will provide those services, then the partner is a public employee. By contrast, if a school department contracts with a school bus company to drive its students and the company can assign any of its drivers to do that work, the

drivers are not public employees for conflict of interest law purposes. (See [Advisory 06-01](#)).

1. DISTRIBUTION OF SUMMARIES OF THE CONFLICT OF INTEREST LAW

The Commission has prepared, and will update as necessary, summaries of the conflict of interest law for state, county, and municipal employees, respectively. These [summaries are available on this website](#). The summaries must be distributed to public employees as described below.

An employee of a private firm that is a contractor, vendor, or consultant to a public agency must be given a summary only if the public agency expressly or impliedly contracted for that particular individual's personal services, thereby making him or her a public employee for purposes of the conflict of interest law. (See [Advisory 06-01](#)).

a. Responsibility for distribution

Responsibility for distributing summaries and collecting acknowledgments of receipt is as follows:

- Appointed state and county employees shall be furnished with the summary by, and file an acknowledgment of receipt with, the employee's appointing authority, or his or her designee.
- Elected state and county employees shall be furnished with the summary by, and file an acknowledgment of receipt with, the Commission.
- Municipal employees shall be furnished with the summary by, and file an acknowledgment of receipt with, the city or town clerk.

There are several ways for state and county appointing authorities (or their designees), and city and town clerks, (hereinafter collectively referred to as "employers"), to comply with the requirement that they distribute summaries of the law and maintain acknowledgments of receipt by their employees. The Commission will accept any of the ways set forth below, or a combination of them, as satisfying the requirements of the law.

b. Compliance deadlines for summaries

Every public employee must be provided with a summary of the law within 30 days of becoming such an employee, and annually thereafter. Employers must distribute the summaries by the following deadlines:

- On or before December 28, 2009, and annually thereafter, summaries must be distributed to current state, county, and municipal employees who became such employees on or before November 28, 2009.

- Summaries must be distributed to persons who become state, county, or municipal employees after November 28, 2009, within 30 days of the date on which they commence employment, and annually thereafter.
- Beginning in 2010, all employers must distribute the summaries to all current employees each year between September 15 and December 15. New employees must receive the summaries within 30 days of the date on which they commence employment and in each subsequent year between September 15 and December 15.

c. Distribution of summaries

Summaries may be distributed in paper or electronic format. If summaries are distributed in paper format, they may be distributed as a stand-alone document or included with some other item distributed to employees (such as paychecks), or employees may be required to pick them up at a designated time and place. If summaries are distributed in electronic format, they may be downloaded from this website and emailed to employees. Employers may combine these methods as they find convenient to reach all employees.

d. Acknowledgments of receipt

Employees' acknowledgments of receipt of the summary of the law may be accepted and maintained in paper or electronic format. Employees may use the acknowledgment of receipt form included at the end of each summary, or the employer may create its own acknowledgment form. Alternatively, employers may maintain a logbook for acknowledgments of receipt and require employees to sign it. Employers may scan paper acknowledgment forms and maintain them electronically for purposes of complying with the conflict of interest law.

If an employer distributes the summary electronically, a return email from the employee will satisfy the statutory requirement of a written acknowledgment of receipt. If an employer distributes the summary electronically to employees using the employees' work email accounts, the employer can request "read receipts" for its emails to employees, and the "read receipts" will satisfy the statutory requirement of a written acknowledgment of receipt. Electronic acknowledgments of receipt may be maintained electronically.

Employers need not choose one of these methods, but may combine methods as they find convenient to reach all employees. Whatever method or methods the employer adopts, the acknowledgments must be maintained in such a manner so as to be readily accessible if requested by the Commission. In particular, state and county appointing authorities (or their designees), and city and town clerks, must maintain records of acknowledgments in a manner that would permit them to comply with requests by the Commission for production of the acknowledgment forms of specific employees and notification of the names of employees who have not complied.

Each employee must provide to his or her employer, as defined herein, an acknowledgment of receipt within ten (10) business days of receipt of the summary.

e. Record-keeping requirements

State and county appointing authorities (or their designees), and city and town clerks, must maintain an annual list of all employees to whom summaries are distributed during that calendar year, and such list must indicate as to each listed employee whether the employee provided an acknowledgment of receipt. In addition to the annual list, the acknowledgment of receipt itself must be maintained as a record of the agency. Both the annual lists and the acknowledgments of receipt must be maintained for six years.

2. ONLINE TRAINING

The Commission currently has on its website an online training program that provides a general introduction to the conflict of interest law, including information on the requirements of the law that apply to former public employees. (This program is geared primarily to state employees, but will be updated in the future to be more relevant to all levels of government.) All state, county, and municipal employees must complete the [online training program](#) that is currently on the Commission's website within 30 days of becoming a public employee, and then once every two years afterwards. The Commission is currently working to revise the current program and create additional online training programs, as appropriate. **Public employees must provide a certificate of completion to their employers, as defined herein, and the employers must retain such certificates for six years (see subparagraph d. below).** A public employee who completes the training currently on the Commission's website will not be required to take a new online training program until the next two year period.

An employee of a private firm that is a contractor, vendor, or consultant to a public agency must complete the online training only if the public agency expressly or impliedly contracted for that particular individual's personal services, thereby making him or her a public employee for purposes of the conflict of interest law. For instance, if a public agency hires an office cleaning firm and the firm can assign any of its workers to clean the public office, the workers are not considered public employees for purposes of the conflict of interest law and are not required to complete the online training. Similarly, if a town hires a bus company to drive its students and the company can assign any of its drivers to do the work, the drivers are not required to complete the training (although school bus drivers employed directly by a town will be required to do so). (See [Advisory 06-01](#)).

While we encourage attendance at the Commission's seminars, such attendance is **not** a substitute for participating in the required online training and does not fulfill the online training requirement.

There are several ways for public employees to comply with the online training requirement and for their employers to comply with the requirement that they maintain

certificates of completion. The Commission will accept any of the ways set forth below, or a combination of them, as satisfying the requirements of the law.

a. Exemptions from the online training requirement

Ideally, all public employees in the Commonwealth would be trained in the conflict of interest law. However, cost and other practical circumstances require that a principled way be found to exempt certain categories of public employees from the mandatory online training requirements without compromising the objectives of the statutory training requirement. The Commission therefore establishes the following guidelines to enable public employers to determine which of their employees are exempt from the online training requirement.

Each public employer may use the guidelines below to develop a list of positions for which online training is not required. Employers are **not** required to obtain the Commission's approval of such lists, but must maintain such lists as public records and provide them to the Commission on request. If the Commission determines that such a list includes positions which should be subject to the online training requirement, it may direct that such positions be removed from the list. Questions about whether particular positions should be subject to the online training requirement may be submitted to the Commission's Legal Division.

i. Positions for Which Online Training Is Required

- All elected public positions, whether compensated or uncompensated.
- All compensated, full-time public employee and official positions.
- All compensated, part-time public employee and official positions, (**except** for temporary or seasonal employee positions in which employees do not have or exercise governmental authority **and** do not participate in or have responsibility for government decision-making, contracting, hiring, investigation or any other discretionary governmental action, as set forth below in subsection ii).
- Any position, including volunteer positions, whether chosen by election, appointment or otherwise, in which the employee personally serves in or provides services to a public agency, whether paid or unpaid, **and** participates in or has responsibility for any government decision-making, contracting, hiring, investigation or any other discretionary government action or otherwise has or exercises governmental authority.

ii. Positions Exempted from the Online Training Requirement

(Note: Employees in these positions must still be given summaries of the law.)

- Unpaid volunteer positions in which employees do not have or exercise governmental authority and do not participate in or have responsibility for

government decision-making, contracting, hiring, investigation or any other discretionary governmental action.

Examples:

- library volunteer positions in which employees reshelve books or read books to children during a story hour;
 - school volunteer positions in which employees come into the schools a few times a year to help with parties and projects, shelve books in the school library, or chaperone field trips and other school events;
 - volunteer positions in which employees pick up litter at parks or beaches, or participate in a town “Clean Up Day”;
 - Senior Center or Parks and Recreation volunteer teacher positions;
 - Positions in which volunteers assist with an event, such as a town July 4th celebration, by selling tickets, engaging in face painting, or helping “police” the grounds.
- Short-term temporary or seasonal compensated positions in which employees do not have or exercise governmental authority **and** do not participate in or have responsibility for government decision-making, contracting, hiring, investigation or any other discretionary governmental action.

Examples:

- poll worker positions
 - non-supervisory seasonal positions, such as, for example, lifeguards and snowplow operators
- Participants in senior citizen tax abatement programs pursuant to General Laws chapter 59, section 5K, and Senior Corps, the Retired and Senior Volunteer Program, Foster Grandparents, Senior Companions and comparable programs.
 - Medical Reserve Corps volunteers.
 - High school, college and graduate school students participating in summer and work-study employment, whether paid or unpaid.

b. Compliance deadlines for online training

Every state, county, and municipal employee not exempted from training as described above must complete the Commission’s online training program once every two years. New employees must complete the online training program within 30 days of becoming such an employee, and once every two years thereafter. Public employees must comply with this requirement by the following deadlines:

- All persons who were state, county, or municipal employees as of September 29, 2009, and continue to be so employed, and all persons who become state, county, or municipal employees between September 29, 2009 and March 3, 2010, must complete the Commission’s online training, and provide certificates of completion to their employers, as defined herein, on or before April 2, 2010.

- All persons who become state, county, or municipal employees on or after March 3, 2010, must complete the Commission’s online training program, and provide certificates of completion to their employers, within 30 days of the date on which they commence employment.
- After April 2, 2010, each continuously employed employee must complete the online training program and provide a certificate of completion within ninety (90) days before, or ninety (90) days after, the two (2) year anniversary date of their last online training completion date. Such certificates of completion must be provided by state and county employees to their respective appointing authorities (or designees), and by municipal employees to their respective city and town clerks. New employees must complete such training within 30 days of the date on which they commence employment and once every two years thereafter, in accordance with the timeframe set forth above.

c. Completing online training

Employees can complete the training on work time and on their work computers. If authorized by their employers, employees can also complete the training on their home computers.

Employers can organize group online training sessions. The designated municipal liaison or his or her designee shall supervise municipal group online training sessions. The appointing authority of a state or county agency or his or her designee shall supervise state and county group online training sessions. Group sessions may use the [online training program](#) from the Commission’s website, so long as the group format is set up so as to ensure that every employee knows the correct answer to every question by the end of the training. Employers who organize group sessions should print the on-line training completion certificate and distribute it to employees, and collect the filled out on-line training completion certificates. Alternatively, the municipal liaison or other person supervising the group training can fill out a certificate of completion for all participating employees, and he or she should sign and date the form.

Employers need not choose only one of these methods, but can combine methods as they find convenient to reach all employees. The Commission also invites employers to propose other means of achieving compliance; if approved by the Commission, these alternative means will also satisfy the online training requirement.

d. Certificates of completion of the online training requirement

Each employee who completes the on-line training should print out the certificate of completion showing that he or she has done so, and give it to his or her employer, as follows:

- Appointed state and county employees shall file the certificate of completion with the employee’s appointing authority, or his or her designee.

- Elected state and county employees shall file the certificate of completion with the Ethics Commission.
- Municipal employees shall file the certificate of completion with the city or town clerk.
- Employees of regional entities that include more than one municipality shall file proof of compliance with the regional entity.

An employer may authorize its employees to save the certificate of completion electronically and email it to a designated employee for filing. Employers may maintain certificates of completion received electronically in electronic form.

Employers may use any of the methods for compliance described above as they find convenient to reach all employees. Whatever method or methods the employer adopts, the certificates of completion must be maintained in such a manner so as to be readily accessible for review if requested by the Commission. In particular, state and county appointing authorities (or their designees), and city and town clerks, must maintain certificates of completion in a manner that would permit them to comply with requests by the Commission for production of the certificates of specific employees and notification of the names of employees who have not complied.

e. Record-keeping requirements

State and county appointing authorities (or their designees), and city and town clerks, must maintain a list of all employees who are required to complete the online training program, and such list must indicate as to each listed employee whether the employee provided a certificate of completion. In addition to the list, the certificate of completion itself must be maintained as a record of the agency. Both the lists and the certificates of completion must be maintained for six years.

3. DESIGNATION OF MUNICIPAL LIAISONS

The law requires municipalities to designate “a senior level employee of the municipality” as a liaison to the Commission. The Commission will disseminate information to the liaisons and will conduct educational seminars for them. To the extent feasible and practicable, liaisons are encouraged to maintain up-to-date lists of email addresses of public employees in their municipalities. Liaisons will also be required to be accessible to public employees in their municipalities and to check the Commission’s website regularly for updates. The Commission may call upon liaisons to provide information about their towns’ compliance with these training and education requirements, and to assist in locating former public employees of their municipalities.

Given the responsibilities that will be required of the liaisons, the Commission recommends (but does not require) that municipalities appoint a full-time administrative employee to the position of municipal liaison, or, if the municipality has no such full-time employee, then a part-time administrative employee, since such a person will need to be accessible to municipal employees and situated so as to be able to carry out these duties.

4. REGIONAL ENTITIES.

The requirements of the ethics reform law apply to all public employees, including employees of regional entities such as regional school districts and regional councils of governments, and independent entities such as water and sewer districts and fire districts and prudential committees.

When an independent entity such as a water and sewer district is contained entirely within a municipality, the city or town clerk is responsible for complying with the requirements concerning summaries and on-line training.

When a regional entity is composed of multiple municipalities, or spans the borders of multiple municipalities, then the regional entity is itself responsible for complying with the requirements concerning summaries and on-line training, and for designating a liaison to the Commission.

Date Issued: October 29, 2009



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- **Mandatory Education and Training Requirements - Implementation Procedures**

Procedures to assist public employees in implementing and complying with mandatory education and training requirements.

- **Summary of the Conflict of Interest Law for State Employees**

By December 28, 2009, and on an annual basis thereafter, all current state employees must be provided with this summary of the conflict of interest law. State employees hired after December 28, 2009, should be provided with the summary within 30 days of the date on which they commence employment, and on an annual basis thereafter. Every state employee is required to sign a written acknowledgment that he has been provided with the summary.

- **Summary of the Conflict of Interest Law for County Employees**

By December 28, 2009, and on an annual basis thereafter, all current county employees must be provided with this summary of the conflict of interest law. County employees hired after December 28, 2009, should be provided with the summary within 30 days of the date on which they commence employment, and on an annual basis thereafter. Every county employee is required to sign a written acknowledgment that he has been provided with the summary.

- **Summary of the Conflict of Interest Law for Municipal Employees**

By December 28, 2009, and on an annual basis thereafter, all current municipal employees must be provided with this summary of the conflict of interest law. Municipal employees hired after December 28, 2009, should be provided with the summary within 30 days of the date on which they commence employment, and on an annual basis thereafter. Every municipal employee is required to sign a written acknowledgment that he has been provided with the summary.

• **Online Training Program (please note deadline extension - see below)**

By April 2, 2010, and every 2 years thereafter, all current state, county and municipal employees must complete this training. Public employees hired after April 2, 2010 must complete this training within 30 days of beginning public service, and every 2 years thereafter. This training is designed primarily for state employees. County and municipal employees should also use this training until it is revised with one tailored to them. Upon completing the program, employees should print out the completion certificate and keep a copy for themselves. Employees will be required to provide a copy of the completion certificate to the Town or City Clerk (municipal employees), their employing agency (appointed state and county employees), or to the Ethics Commission (elected state and county employees). Completing the single program will be considered by the Commission as meeting the Bill's training requirements until a second program is added. PLEASE NOTE: When multiple users attempt to complete the current training program using the same computer they may experience a problem accessing the beginning of the program. The user will need to open their internet browser, click on "Tools", then "Internet Options", select "Delete Cookies", then click "OK". The user will be able to click back on the Online Training module on the Commission's website and start at the beginning.



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Mandatory Education and Training Requirements - Implementation Procedures

Introduction

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Questions, Comments and Suggestions

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State and county appointing authorities (or their designees), and city and town clerks, must maintain an annual list of all employees to whom summaries are distributed during that calendar year, and such list must indicate as to each listed employee whether the employee provided an acknowledgment of receipt. In addition to the annual list, the acknowledgment of receipt itself must be maintained as a record of the agency. Both the annual lists and the acknowledgments of receipt must be maintained for six years.

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While we encourage attendance at the Commission's seminars, such attendance is **not** a substitute for participating in the required online training and does not fulfill the online training requirement.

There are several ways for public employees to comply with the online training requirement and for their employers to comply with the requirement that they maintain certificates of completion. The Commission will accept any of the ways set forth below, or a

combination of them, as satisfying the requirements of the law.

a. Exemptions from the online training requirement

Ideally, all public employees in the Commonwealth would be trained in the conflict of interest law. However, cost and other practical circumstances require that a principled way be found to exempt certain categories of public employees from the mandatory online training requirements without compromising the objectives of the statutory training requirement. The Commission therefore establishes the following guidelines to enable public employers to determine which of their employees are exempt from the online training requirement.

Each public employer may use the guidelines below to develop a list of positions for which online training is not required. Employers are **not** required to obtain the Commission's approval of such lists, but must maintain such lists as public records and provide them to the Commission on request. If the Commission determines that such a list includes positions which should be subject to the online training requirement, it may direct that such positions be removed from the list. Questions about whether particular positions should be subject to the online training requirement may be submitted to the Commission's Legal Division.

i. Positions for Which Online Training Is Required

- All elected public positions, whether compensated or uncompensated.
- All compensated, full-time public employee and official positions.
- All compensated, part-time public employee and official positions, (**except** for temporary or seasonal employee positions in which employees do not have or exercise governmental authority **and** do not participate in or have responsibility for government decision-making, contracting, hiring, investigation or any other discretionary governmental action, as set forth below in subsection ii).
- Any position, including volunteer positions, whether chosen by election, appointment or otherwise, in which the employee personally serves in or provides services to a public agency, whether paid or unpaid, **and** participates in or has responsibility for any government decision-making, contracting, hiring, investigation or any other discretionary government action or otherwise has or exercises governmental authority.

ii. Positions Exempted from the Online Training Requirement (Note: Employees in these positions must still be given summaries of the law.)

- Unpaid volunteer positions in which employees do not have or exercise governmental authority and do not participate in or have responsibility for government decision-making, contracting, hiring, investigation or any other discretionary governmental action.

Examples:

- library volunteer positions in which employees reshelve books or read books to children during a story hour;
- school volunteer positions in which employees come into the schools a few times a year to help with parties and projects, shelve books in the school library, or chaperone field trips and other school events;
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- Senior Center or Parks and Recreation volunteer teacher positions;
- Positions in which volunteers assist with an event, such as a town July 4th celebration, by selling tickets, engaging in face

painting, or helping "police" the grounds.

- Short-term temporary or seasonal compensated positions in which employees do not have or exercise governmental authority **and** do not participate in or have responsibility for government decision-making, contracting, hiring, investigation or any other discretionary governmental action.

Examples:

- poll worker positions
- non-supervisory seasonal positions, such as, for example, lifeguards and snowplow operators
- Participants in senior citizen tax abatement programs pursuant to General Laws chapter 59, section 5K, and Senior Corps, the Retired and Senior Volunteer Program, Foster Grandparents, Senior Companions and comparable programs.
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- High school, college and graduate school students participating in summer and work-study employment, whether paid or unpaid.

b. Compliance deadlines for online training

Every state, county, and municipal employee not exempted from training as described above must complete the Commission's online training program once every two years. New employees must complete the online training program within 30 days of becoming such an employee, and once every two years thereafter. Public employees must comply with this requirement by the following deadlines:

- All persons who were state, county, or municipal employees as of September 29, 2009, and continue to be so employed, and all persons who become state, county, or municipal employees between September 29, 2009 and March 3, 2010, must complete the Commission's online training, and provide certificates of completion to their employers, as defined herein, on or before April 2, 2010.
- All persons who become state, county, or municipal employees on or after March 3, 2010, must complete the Commission's online training program, and provide certificates of completion to their employers, within 30 days of the date on which they commence employment.
- After April 2, 2010, each continuously employed employee must complete the online training program and provide a certificate of completion within ninety (90) days before, or ninety (90) days after, the two (2) year anniversary date of their last online training completion date. Such certificates of completion must be provided by state and county employees to their respective appointing authorities (or designees), and by municipal employees to their respective city and town clerks. New employees must complete such training within 30 days of the date on which they commence employment and once every two years thereafter, in accordance with the timeframe set forth above.

c. Completing online training

Employees can complete the training on work time and on their work computers. If authorized by their employers, employees can also complete the training on their home computers.

Employers can organize group online training sessions. The designated municipal liaison or his or her designee shall supervise

municipal group online training sessions. The appointing authority of a state or county agency or his or her designee shall supervise state and county group online training sessions. Group sessions may use the [online training program](#) from the Commission's website, so long as the group format is set up so as to ensure that every employee knows the correct answer to every question by the end of the training. Employers who organize group sessions should print the on-line training completion certificate and distribute it to employees, and collect the filled out on-line training completion certificates. Alternatively, the municipal liaison or other person supervising the group training can fill out a certificate of completion for all participating employees, and he or she should sign and date the form.

Employers need not choose only one of these methods, but can combine methods as they find convenient to reach all employees. The Commission also invites employers to propose other means of achieving compliance; if approved by the Commission, these alternative means will also satisfy the online training requirement.

d. Certificates of completion of the online training requirement

Each employee who completes the on-line training should print out the certificate of completion showing that he or she has done so, and give it to his or her employer, as follows:

- Appointed state and county employees shall file the certificate of completion with the employee's appointing authority, or his or her designee.
- Elected state and county employees shall file the certificate of completion with the Ethics Commission.
- Municipal employees shall file the certificate of completion with the city or town clerk.
- Employees of regional entities that include more than one municipality shall file proof of compliance with the regional entity.

An employer may authorize its employees to save the certificate of completion electronically and email it to a designated employee for filing. Employers may maintain certificates of completion received electronically in electronic form.

Employers may use any of the methods for compliance described above as they find convenient to reach all employees. Whatever method or methods the employer adopts, the certificates of completion must be maintained in such a manner so as to be readily accessible for review if requested by the Commission. In particular, state and county appointing authorities (or their designees), and city and town clerks, must maintain certificates of completion in a manner that would permit them to comply with requests by the Commission for production of the certificates of specific employees and notification of the names of employees who have not complied.

e. Record-keeping requirements

State and county appointing authorities (or their designees), and city and town clerks, must maintain a list of all employees who are required to complete the online training program, and such list must indicate as to each listed employee whether the employee provided a certificate of completion. In addition to the list, the certificate of completion itself must be maintained as a record of the agency. Both the lists and the certificates of completion must be maintained for six years.

3. DESIGNATION OF MUNICIPAL LIAISONS

The law requires municipalities to designate "a senior level employee of the municipality" as a liaison to the Commission. The Commission will disseminate information to the liaisons and will conduct educational seminars for them. To the extent feasible and practicable, liaisons are encouraged to maintain up-to-date lists of email addresses of public employees in their municipalities. Liaisons will also be required to be accessible to public employees in their municipalities and to check the Commission's website regularly for updates. The Commission may call upon liaisons to provide information about their towns' compliance with these training and education requirements, and to assist in locating former public employees of their municipalities.

Given the responsibilities that will be required of the liaisons, the Commission recommends (but does not require) that municipalities appoint a full-time administrative employee to the position of municipal liaison, or, if the municipality has no such full-time employee,

then a part-time administrative employee, since such a person will need to be accessible to municipal employees and situated so as to be able to carry out these duties.

4. REGIONAL ENTITIES

The requirements of the ethics reform law apply to all public employees, including employees of regional entities such as regional school districts and regional councils of governments, and independent entities such as water and sewer districts and fire districts and prudential committees.

When an independent entity such as a water and sewer district is contained entirely within a municipality, the city or town clerk is responsible for complying with the requirements concerning summaries and on-line training.

When a regional entity is composed of multiple municipalities, or spans the borders of multiple municipalities, then the regional entity is itself responsible for complying with the requirements concerning summaries and on-line training, and for designating a liaison to the Commission.

Date Issued: October 29, 2009



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Summary of the Conflict of Interest Law for State Employees

This summary of the conflict of interest law, General Laws chapter 268A, is intended to help state employees understand how that law applies to them. This summary is not a substitute for legal advice, nor does it mention every aspect of the law that may apply in a particular situation. State employees can obtain free confidential advice about the conflict of interest law from the Commission's Legal Division. State agency counsel may also provide advice.

The conflict of interest law seeks to prevent conflicts between private interests and public duties, foster integrity in public service, and promote the public's trust and confidence in that service by placing restrictions on what state employees may do on the job, after hours, and after leaving public service, as described below. The sections referenced below are sections of G.L. c. 268A.

When the Commission determines that the conflict of interest law has been violated, it can impose a civil penalty of up to \$10,000 (\$25,000 for bribery cases) for each violation. In addition, the Commission can order the violator to repay any economic advantage he gained by the violation, and to make restitution to injured third parties. Violations of the conflict of interest law can also be prosecuted criminally.

I. Are you a state employee for conflict of interest law purposes?

You do not have to be a full-time, paid state employee to be considered a state employee for conflict of interest purposes. Anyone performing services for a state agency or holding a state position, whether paid or unpaid, including full- and part-time state employees, elected officials, volunteers, and consultants, is a state employee under the conflict of interest law. An employee of a private firm can also be a state employee, if the private firm has a contract with the state and the employee is a "key employee" under the contract, meaning the state has specifically contracted for her services. The law also covers private parties who engage in impermissible dealings with state employees, such as offering bribes or illegal gifts.

II. On-the-job restrictions.

(a) **Bribes.** Asking for and taking bribes is prohibited. (See Section 2)

A bribe is anything of value corruptly received by a state employee in exchange for the employee being influenced in his official actions. Giving, offering, receiving, or asking for a bribe is illegal.

Bribes are more serious than illegal gifts because they involve corrupt intent. In other words, the state employee intends to sell his office by agreeing to do or not do some official act, and the giver intends to influence him to do so. Bribes of any value are illegal.

(b) **Gifts and gratuities.** Asking for or accepting a gift because of your official position, or

because of something you can do or have done in your official position, is prohibited. (See Sections 3, 23(b)(2), and 26)

State employees may not accept gifts and gratuities valued at \$50 or more given to influence their official actions or because of their official position. Accepting a gift intended to reward past official action or to bring about future official action is illegal, as is giving such gifts. Accepting a gift given to you because of the state position you hold is also illegal. Meals, entertainment event tickets, golf, gift baskets, and payment of travel expenses can all be illegal gifts if given in connection with official action or position, as can anything worth \$50 or more. A number of smaller gifts together worth \$50 or more may also violate these sections.

Example of violation: A highway inspector allows a pavement contractor to buy him lunch every day during a two-month road repaving project.

Example of violation: An industry association provides a free day's outing, including a barbecue lunch, golf, a cocktail hour, and a clam bake, to a group of legislators.

Regulatory exemptions. There are situations in which a state employee's receipt of a gift does not present a genuine risk of a conflict of interest, and may in fact advance the public interest. The Commission has created exemptions, and is considering creating additional exemptions, permitting giving and receiving gifts in these situations. One commonly used exemption permits state employees to accept payment of travel-related expenses when doing so advances a public purpose. Other exemptions are listed on the Commission's website.

Example where there is no violation: A non-profit concerned with preventing domestic violence offers to pay the travel expenses of an assistant district attorney to a conference on prosecuting domestic violence cases. The attorney fills out a disclosure form and obtains prior approval from his appointing authority.

(c) Misuse of position. Using your official position to get something you are not entitled to, or to get someone else something they are not entitled to, is prohibited. Causing someone else to do these things is also prohibited. (See Sections 23(b)(2) and 26)

A state employee may not use her official position to get something worth \$50 or more that would not be properly available to other similarly situated individuals. Similarly, a state employee may not use her official position to get something worth \$50 or more for someone else that would not be properly available to other similarly situated individuals. Causing someone else to do these things is also prohibited.

Example of violation: A state employee writes a novel on work time, using her office computer, and directing her secretary to proofread the draft.

Example of violation: The commissioner of a state agency directs subordinates to drive her wife to and from the grocery store.

Example of violation: An assistant attorney general avoids a speeding ticket by asking the police officer who stops him, "Do you know who I am?" and showing his state I.D.

(d) Self-dealing and nepotism. Participating as a state employee in a matter in which you, your immediate family, your business organization, or your future employer has a financial interest is prohibited. (See Section 6)

A state employee may not participate in any particular matter in which he or a member of his immediate family (parents, children, siblings, spouse, and spouse's parents, children, and siblings) has a financial interest. He also may not participate in any particular matter in which a prospective employer, or a business organization of which he is a director, officer, trustee, or employee has a financial interest. Participation includes discussing as well as voting on a matter, and delegating a matter to someone else.

A financial interest may create a conflict of interest whether it is large or small, and positive or negative. In other words, it does not matter if a lot of money is involved or only a little. It also does not matter if you are putting money into your pocket or taking it out. If you, your immediate family, your business, or your employer have or has a financial interest in a matter, you may not participate. The financial interest must be direct and immediate or reasonably foreseeable to create a conflict. Financial interests which are remote, speculative or not sufficiently identifiable do not create conflicts.

Neither general legislation nor home rule legislation are "particular matters" for purposes of the conflict of interest law. A state employee can participate in general legislation and home rule legislation even if she has a financial interest in such legislation, but state legislators and constitutional officers must file a disclosure if the matter will substantially affect their financial interests.

Example of violation: The chief administrative officer of a state agency, who has a balance of 900 hours in accumulated sick leave, proposes a plan by which the agency will pay employees for accumulated sick leave.

Example of violation: An employee of the Massachusetts Cultural Council is also the director of a non-profit corporation dedicated to increasing art in public spaces. The non-profit applies to the Council for a grant, and the employee participates in rating the applications received for that grant.

Example of violation: A state employee promotes his son to a position under his supervision.

Example where there is no violation: Proposed legislation under consideration by the State Senate will amend the General Laws with respect to insurance coverage of ocean front property. A State Senator owns ocean front property in Cape Cod. The Senator can discuss and vote on the legislation because it is general legislation, but must file a disclosure because the legislation will substantially affect her financial interest.

A state employee whose duties do not require her to participate in a particular matter may comply with the law by simply not participating in the particular matter in which she has a financial interest. She need not give a reason for not participating.

An appointed state employee may also comply with the law by filing a written disclosure about the financial interest with his appointing authority, and seeking permission to participate notwithstanding the conflict. If a state employee's duties would require him to participate in a matter in which he has a financial interest, this is the procedure he should use. The appointing authority may grant written permission to participate if she determines that the financial interest in question is not so substantial that it is likely to affect the integrity of the employee's services to the state. Otherwise, the appointing authority will assign the matter to someone else, or do it herself. Participating without disclosing the financial interest is a violation. Elected employees cannot use the disclosure procedure because they have no appointing authority.

Example where there is no violation: An appointed member of a state licensing board wishes to participate in board discussions about imposing a continuing education requirement on licensees. Compliance with the proposed requirement will cost every licensee several hundred dollars per year. The board member is himself a licensee. Prior to participating in any board discussion, the member files a disclosure of his financial interest with his appointing authority, and the appointing authority gives him a written determination authorizing his participation, despite his financial interest.

(e) False claims. Presenting a false claim to your employer for a payment or benefit is prohibited, and causing someone else to do so is also prohibited. (See Sections 23(b)(4) and 26)

A state employee may not present a false or fraudulent claim to his employer for any payment or benefit worth \$50 or more, or cause another person to do so.

Example of violation: A state agency manager directs his secretary to fill out time sheets to show him as present at work on days when he was skiing.

(f) Appearance of conflict. Acting in a manner that would make a reasonable person think you can be improperly influenced is prohibited. (See Section 23(b)(3))

A state employee may not act in a manner that would cause a reasonable person to think that she would show favor toward someone, or that she can be improperly influenced. Section 23(b)(3) requires a state employee to consider whether her relationships and affiliations could prevent her from acting fairly and objectively when she performs her duties for the state. If she cannot be fair and objective because of a relationship or affiliation, she should not perform her duties. However, a state employee, whether elected or appointed, can avoid violating this provision by making a public disclosure of the facts. An appointed employee must make the disclosure in writing to his appointing official.

Example where there is no violation: A state agency employee is engaged to be married to the owner of a business. The business owner submits a response to a request for proposals from the agency. A reasonable person could conclude that the employee might favor her fiance's response. The employee files a written disclosure with her appointing authority explaining her relationship with her fiance prior to the meeting at which responses to the RFP will be considered. There is no violation of Section 23(b)(3).

Example where there is no violation: The State House of Representatives is considering legislation which will create a general law that sets a maximum limit on insurance premiums paid by obstetricians. A State Representative is married to an obstetrician who will be affected by the proposed legislation. The Representative can participate in the matter but files a disclosure of his wife's interest to eliminate any appearance of a conflict. There is no violation.

(g) Confidential information. Improperly disclosing or personally using confidential information obtained through your job is prohibited. (See Section 23(c))

State employees may not improperly disclose confidential information, or make personal use of non-public information they acquired in the course of their official duties to further their personal interests.

III. After-hours restrictions.

(a) Taking a second paid job that conflicts with the duties of your state job is prohibited. (See Section 23(b)(1))

A state employee may not accept other paid employment if the responsibilities of the second job are incompatible with his or her state job.

Example: A state police trooper may not work as a paid private security guard in the area where he serves because the demands of his private employment would conflict with his duties as a trooper.

Example: A State Senator may not take a second position counseling clients on how to receive favorable consideration in the Massachusetts Senate.

(b) Divided loyalties. Receiving pay from anyone other than the state to work on a matter involving the state is prohibited. Acting as agent or attorney for anyone other than the state in a matter involving the state is also prohibited whether or not you are paid. (See Section 4)

Because the Commonwealth is entitled to the undivided loyalty of its employees, a state employee may not be paid by other people and organizations in relation to a matter in which the state has an interest. In addition, a state employee may not act on behalf of other people and organizations or act as an attorney for other people and organizations if the state has an interest in a matter. Acting as agent includes contacting the state in person, by phone, or in writing; acting as a liaison; providing documents to the state; and serving as spokesman.

A state employee may always represent his own personal interests, even before his own state agency or board, on the same terms and conditions that would apply to other similarly situated members of the public.

State Senators and State Representatives are not subject to Section 4. However, they may personally appear before state agencies for compensation other than their legislative salaries only on ministerial matters such as filing tax returns, permit and license applications, and incorporation papers, and in state court proceedings and quasi-judicial agency proceedings.

Example of violation: A state employee makes inquiries to another state agency about an investigation that the second state agency is conducting of his wife.

Example of violation: A state advisory commission member participates in matters at his agency that affect one of his private clients, and is compensated by the client for his work on its behalf.

Example where there is no violation: A State Senator is contacted by a constituent who has applied for benefits to a state agency, has not received a timely determination by the agency, and cannot get his calls to the agency returned. The Senator may call the agency on the constituent's behalf to inquire about the matter. The Senator's aide may also call the agency on the constituent's behalf to inquire about the matter without violating Section 4.

While many state employees earn their livelihood in state jobs, some state employees volunteer their time to the state or receive small stipends. Others may serve in a part-time state position which permits them to have other personal or private employment during normal working hours. In recognition of the need not to unduly restrict the ability of volunteers and part-time employees to earn a living, the law is less restrictive for these "special" state employees than for other state employees.

If a state position is a "special" state position, an employee holding that position may be paid by others, act on behalf of others, and act as attorney for others with respect to matters before state agencies other than his own, provided that he has not officially participated in the matter, and the matter is not now, and has not within the past year been, under his official responsibility, and is not pending before his own state agency.

Example: A part-time investigator for a state agency may work on her own time privately for a party litigating a case with a different state agency, provided that she has not participated in or had responsibility for the litigated matter in her state position.

(c) Inside track. Being paid by the state, directly or indirectly, under some second arrangement in addition to your job is prohibited, unless an exemption applies. (See Section 7)

A state employee generally may not have a financial interest in a state contract, including a second state job. A state employee is also generally prohibited from having an indirect financial interest in a contract that the state has with someone else. This provision is intended to prevent state employees from having an "inside track" to further financial opportunities.

Example of violation: A state employee accepts paid employment with a second state agency.

Example of violation: A state employee buys a surplus computer from his agency.

Example of violation: A state employee wants to work for a non-profit that receives funding under a contract with the state. Unless she can satisfy the requirements of an exemption under Section 7, she cannot take the job.

There are numerous exemptions. Some exemptions apply only to special state employees. Specific exemptions may cover State Senators and State Representatives, teaching and related activities in state facilities, providing services to state agency clients, and other specific situations. Please call the Ethics Commission's Legal Division for advice about a specific situation.

IV. After you leave state employment. (See Section 5)

(a) Forever ban. After you leave your state job, you may never work for anyone other than the state on a matter that you worked on as a state employee.

If you participated in a matter as a state employee, you cannot ever be paid to work on that same matter for anyone other than the state, nor may you act for someone else, whether paid or not. The purpose of this restriction is to bar former employees from selling to private interests their familiarity with the facts of particular matters that are of continuing concern to the state. The restriction does not prohibit former state employees from using the expertise acquired in government service in their subsequent private activities.

Example of violation: A former state employee works for a contractor under a contract that she helped to draft and oversee for the state.

(b) One year cooling-off period. For one year after you leave your state job you may not participate in any matter over which you had official responsibility during your last two years of public service.

Former state employees are barred for one year after they leave state employment from personally appearing before any agency of the state in connection with matters that were under their authority in their prior state positions during the two years before they left.

Example: A state employee negotiates a three-year contract with a company. The manager who supervised the employee, and had official responsibility for the contract but did not participate in negotiating it, leaves her job to work for the company to which the contract was awarded. The former manager may not call or write the state in connection with the company's work on the contract for one year after leaving the state.

(c) Partners. Your partners will be subject to restrictions while you serve as a state employee and after your state service ends.

Partners of state employees and former state employees are also subject to restrictions under the conflict of interest law. If a state employee participated in a matter, or if he has official responsibility for a matter, then his partner may not act on behalf of anyone other than the state or provide services as an attorney to anyone but the state in relation to the matter.

Example: An architect serves on the state Architectural Access Board, and is responsible for every matter that comes before the Board. While he serves, his partners may not submit architectural plans for any clients seeking a variance from the Board.

Example: A former state agency general counsel joins a law firm as a partner. Her new partners cannot represent any private clients in connection with matters she litigated for the state for one year after her job with the state ended.

Example: A professional engineer formerly employed by a state agency joins an engineering firm organized as a partnership. His new partners cannot appear before his former agency in connection with matters that he worked on for the state for one year after his job with the state ended.

(d) Legislative and executive agents. For one year after you leave your state job you may not act as a legislative or executive agent before your former agency.

Example of violation: The chief of staff of a State Senator leaves his position. Three months later, he contacts his successor to lobby on behalf of a client.

* * * * *

This summary is not intended to be legal advice and, because it is a summary, it does not mention every provision of the conflict law that may apply in a particular situation. You can find further information about how the law applies in many situations elsewhere on this

website. You can also contact the Commission's Legal Division via this website, by telephone, or by letter.

Version 3: Revised October 7, 2009

ACKNOWLEDGMENT OF RECEIPT

I, _____, hereby acknowledge that I
(first and last name)
received a copy of the summary of the conflict of interest law
for state employees on _____.
(date)

State employees should complete the acknowledgment of receipt and return it to the individual who provided them with a copy of the summary. Alternatively, state employees may send an e-mail acknowledging receipt of the summary to the individual who provided them with a copy of it.



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Summary of the Conflict of Interest Law for Municipal Employees

This summary of the conflict of interest law, General Laws chapter 268A, is intended to help municipal employees understand how that law applies to them. This summary is not a substitute for legal advice, nor does it mention every aspect of the law that may apply in a particular situation. Municipal employees can obtain free confidential advice about the conflict of interest law from the Commission's Legal Division at our website, phone number, and address above. Municipal counsel may also provide advice.

The conflict of interest law seeks to prevent conflicts between private interests and public duties, foster integrity in public service, and promote the public's trust and confidence in that service by placing restrictions on what municipal employees may do on the job, after hours, and after leaving public service, as described below. The sections referenced below are sections of G.L. c. 268A.

When the Commission determines that the conflict of interest law has been violated, it can impose a civil penalty of up to \$10,000 (\$25,000 for bribery cases) for each violation. In addition, the Commission can order the violator to repay any economic advantage he gained by the violation, and to make restitution to injured third parties. Violations of the conflict of interest law can also be prosecuted criminally.

I. Are you a municipal employee for conflict of interest law purposes?

You do not have to be a full-time, paid municipal employee to be considered a municipal employee for conflict of interest purposes. Anyone performing services for a city or town or holding a municipal position, whether paid or unpaid, including full- and part-time municipal employees, elected officials, volunteers, and consultants, is a municipal employee under the conflict of interest law. An employee of a private firm can also be a municipal employee, if the private firm has a contract with the city or town and the employee is a "key employee" under the contract, meaning the town has specifically contracted for her services. The law also covers private parties who engage in impermissible dealings with municipal employees, such as offering bribes or illegal gifts.

II. On-the-job restrictions.

(a) **Bribes.** Asking for and taking bribes is prohibited. (See Section 2)

A bribe is anything of value corruptly received by a municipal employee in exchange for the employee being influenced in his official actions. Giving, offering, receiving, or asking for a bribe is illegal.

Bribes are more serious than illegal gifts because they involve corrupt intent. In other words, the municipal employee intends to sell his office by agreeing to do or not do some official act, and the giver intends to influence him to do so. Bribes of any value are illegal.

(b) Gifts and gratuities. Asking for or accepting a gift because of your official position, or because of something you can do or have done in your official position, is prohibited. (See Sections 3, 23(b)(2), and 26)

Municipal employees may not accept gifts and gratuities valued at \$50 or more given to influence their official actions or because of their official position. Accepting a gift intended to reward past official action or to bring about future official action is illegal, as is giving such gifts. Accepting a gift given to you because of the municipal position you hold is also illegal. Meals, entertainment event tickets, golf, gift baskets, and payment of travel expenses can all be illegal gifts if given in connection with official action or position, as can anything worth \$50 or more. A number of smaller gifts together worth \$50 or more may also violate these sections.

Example of violation: A town administrator accepts reduced rental payments from developers.

Example of violation: A developer offers a ski trip to a school district employee who oversees the developer's work for the school district.

Regulatory exemptions. There are situations in which a municipal employee's receipt of a gift does not present a genuine risk of a conflict of interest, and may in fact advance the public interest. The Commission has created exemptions, and is considering creating additional exemptions, permitting giving and receiving gifts in these situations. One commonly used exemption permits municipal employees to accept payment of travel-related expenses when doing so advances a public purpose. Other exemptions are listed on the Commission's website.

Example where there is no violation: A fire truck manufacturer offers to pay the travel expenses of a fire chief to a trade show where the chief can examine various kinds of fire-fighting equipment that the town may purchase. The chief fills out a disclosure form and obtains prior approval from his appointing authority.

(c) Misuse of position. Using your official position to get something you are not entitled to, or to get someone else something they are not entitled to, is prohibited. Causing someone else to do these things is also prohibited. (See Sections 23(b)(2) and 26)

A municipal employee may not use her official position to get something worth \$50 or more that would not be properly available to other similarly situated individuals. Similarly, a municipal employee may not use her official position to get something worth \$50 or more for someone else that would not be properly available to other similarly situated individuals. Causing someone else to do these things is also prohibited.

Example of violation: A full-time town employee writes a novel on work time, using her office computer, and directing her secretary to proofread the draft.

Example of violation: A city councilor directs subordinates to drive the councilor's wife to and from the grocery store.

Example of violation: A mayor avoids a speeding ticket by asking the police officer who stops him, "Do you know who I am?" and showing his municipal I.D.

(d) Self-dealing and nepotism. Participating as a municipal employee in a matter in which you, your immediate family, your business organization, or your future employer has a financial interest is prohibited. (See Section 19)

A municipal employee may not participate in any particular matter in which he or a member of his immediate family (parents, children, siblings, spouse, and spouse's parents, children, and siblings) has a financial interest. He also may not participate in any particular matter in which a prospective employer, or a business organization of which he is a director, officer, trustee, or employee has a financial interest. Participation includes discussing as well as voting on a matter, and delegating a matter to someone else.

A financial interest may create a conflict of interest whether it is large or small, and positive or negative. In other words, it does not matter if a lot of money is involved or only a little. It also does not matter if you are putting money into your pocket or taking it out. If you, your immediate family, your business, or your employer have or has a financial interest in a matter, you may not participate. The financial interest must be direct and immediate or reasonably foreseeable to create a conflict. Financial interests which are remote, speculative or not sufficiently identifiable do not create conflicts.

Example of violation: A school committee member's wife is a teacher in the town's public schools. The school committee member votes on the budget line item for teachers' salaries.

Example of violation: A member of a town affordable housing committee is also the director of a non-profit housing development corporation. The non-profit makes an application to the committee, and the member/director participates in the discussion.

Example: A planning board member lives next door to property where a developer plans to construct a new building. Because the

planning board member owns abutting property, he is presumed to have a financial interest in the matter. He cannot participate unless he provides the State Ethics Commission with an opinion from a qualified independent appraiser that the new construction will not affect his financial interest.

In many cases, where not otherwise required to participate, a municipal employee may comply with the law by simply not participating in the particular matter in which she has a financial interest. She need not give a reason for not participating.

There are several exemptions to this section of the law. An appointed municipal employee may file a written disclosure about the financial interest with his appointing authority, and seek permission to participate notwithstanding the conflict. The appointing authority may grant written permission if she determines that the financial interest in question is not so substantial that it is likely to affect the integrity of his services to the municipality. Participating without disclosing the financial interest is a violation. Elected employees cannot use the disclosure procedure because they have no appointing authority.

Example where there is no violation: An appointed member of the town zoning advisory committee, which will review and recommend changes to the town's by-laws with regard to a commercial district, is a partner at a company that owns commercial property in the district. Prior to participating in any committee discussions, the member files a disclosure with the zoning board of appeals that appointed him to his position, and that board gives him a written determination authorizing his participation, despite his company's financial interest. There is no violation.

There is also an exemption for both appointed and elected employees where the employee's task is to address a matter of general policy and the employee's financial interest is shared with a substantial portion (generally 10% or more) of the town's population, such as, for instance, a financial interest in real estate tax rates or municipal utility rates.

(e) False claims. Presenting a false claim to your employer for a payment or benefit is prohibited, and causing someone else to do so is also prohibited. (See Sections 23(b)(4) and 26)

A municipal employee may not present a false or fraudulent claim to his employer for any payment or benefit worth \$50 or more, or cause another person to do so.

Example of violation: A public works director directs his secretary to fill out time sheets to show him as present at work on days when he was skiing.

(f) Appearance of conflict. Acting in a manner that would make a reasonable person think you can be improperly influenced is prohibited. (See Section 23(b)(3))

A municipal employee may not act in a manner that would cause a reasonable person to think that she would show favor toward someone or that she can be improperly influenced. Section 23(b)(3) requires a municipal employee to consider whether her relationships and affiliations could prevent her from acting fairly and objectively when she performs her duties for a city or town. If she cannot be fair and objective because of a relationship or affiliation, she should not perform her duties. However, a municipal employee, whether elected or appointed, can avoid violating this provision by making a public disclosure of the facts. An appointed employee must make the disclosure in writing to his appointing official.

Example where there is no violation: A developer who is the cousin of the chair of the conservation commission has filed an application with the commission. A reasonable person could conclude that the chair might favor her cousin. The chair files a written disclosure with her appointing authority explaining her relationship with her cousin prior to the meeting at which the application will be considered. There is no violation of Sec. 23(b)(3).

(g) Confidential information. Improperly disclosing or personally using confidential information obtained through your job is prohibited. (See Section 23(c))

Municipal employees may not improperly disclose confidential information, or make personal use of non-public information they acquired in the course of their official duties to further their personal interests.

III. After-hours restrictions.

(a) Taking a second paid job that conflicts with the duties of your municipal job is prohibited. (See Section 23(b)(1))

A municipal employee may not accept other paid employment if the responsibilities of the second job are incompatible with his or her municipal job.

Example: A police officer may not work as a paid private security guard in the town where he serves because the demands of his

private employment would conflict with his duties as a police officer.

(b) Divided loyalties. Receiving pay from anyone other than the city or town to work on a matter involving the city or town is prohibited. Acting as agent or attorney for anyone other than the city or town in a matter involving the city or town is also prohibited whether or not you are paid. (See Sec. 17)

Because cities and towns are entitled to the undivided loyalty of their employees, a municipal employee may not be paid by other people and organizations in relation to a matter if the city or town has an interest in the matter. In addition, a municipal employee may not act on behalf of other people and organizations or act as an attorney for other people and organizations in which the town has an interest. Acting as agent includes contacting the municipality in person, by phone, or in writing; acting as a liaison; providing documents to the city or town; and serving as spokesman.

A municipal employee may always represent his own personal interests, even before his own municipal agency or board, on the same terms and conditions that other similarly situated members of the public would be allowed to do so. A municipal employee may also apply for building and related permits on behalf of someone else and be paid for doing so, unless he works for the permitting agency, or an agency which regulates the permitting agency.

Example of violation: A full-time health agent submits a septic system plan that she has prepared for a private client to the town's board of health.

Example of violation: A planning board member represents a private client before the board of selectmen on a request that town meeting consider rezoning the client's property.

While many municipal employees earn their livelihood in municipal jobs, some municipal employees volunteer their time to provide services to the town or receive small stipends. Others, such as a private attorney who provides legal services to a town as needed, may serve in a position in which they may have other personal or private employment during normal working hours. In recognition of the need not to unduly restrict the ability of town volunteers and part-time employees to earn a living, the law is less restrictive for "special" municipal employees than for other municipal employees.

The status of "special" municipal employee has to be assigned to a municipal position by vote of the board of selectmen, city council, or similar body. A position is eligible to be designated as "special" if it is unpaid, or if it is part-time and the employee is allowed to have another job during normal working hours, or if the employee was not paid for working more than 800 hours during the preceding 365 days. It is the position that is designated as "special" and not the person or persons holding the position. Selectmen in towns of 10,000 or fewer are automatically "special"; selectman in larger towns cannot be "specials."

If a municipal position has been designated as "special," an employee holding that position may be paid by others, act on behalf of others, and act as attorney for others with respect to matters before municipal boards other than his own, provided that he has not officially participated in the matter, and the matter is not now, and has not within the past year been, under his official responsibility.

Example: A school committee member who has been designated as a special municipal employee appears before the board of health on behalf of a client of his private law practice, on a matter that he has not participated in or had responsibility for as a school committee member. There is no conflict. However, he may not appear before the school committee, or the school department, on behalf of a client because he has official responsibility for any matter that comes before the school committee. This is still the case even if he has recused himself from participating in the matter in his official capacity.

Example: A member who sits as an alternate on the conservation commission is a special municipal employee. Under town by-laws, he only has official responsibility for matters assigned to him. He may represent a resident who wants to file an application with the conservation commission as long as the matter is not assigned to him and he will not participate in it.

(c) Inside track. Being paid by your city or town, directly or indirectly, under some second arrangement in addition to your job is prohibited, unless an exemption applies. (See Section 20)

A municipal employee generally may not have a financial interest in a municipal contract, including a second municipal job. A municipal employee is also generally prohibited from having an indirect financial interest in a contract that the city or town has with someone else. This provision is intended to prevent municipal employees from having an "inside track" to further financial opportunities.

Example of violation: Legal counsel to the town housing authority becomes the acting executive director of the authority, and is paid in both positions.

Example of violation: A selectman buys a surplus truck from the town DPW.

Example of violation: A full-time secretary for the board of health wants to have a second job working part-time for the town library. She will violate Section 20 unless she can meet the requirements of an exemption.

Example of violation: A city councilor wants to work for a non-profit that receives funding under a contract with her city. Unless she can satisfy the requirements of an exemption under Section 20, she cannot take the job.

There are numerous exemptions. A municipal employee may hold multiple unpaid or elected positions. Some exemptions apply only to special municipal employees. Specific exemptions may cover housing-related benefits, public safety positions, certain elected positions, small towns, and other specific situations. Please call the Ethics Commission's Legal Division for advice about a specific situation.

IV. After you leave municipal employment. (See Section 18)

(a) Forever ban. After you leave your municipal job, you may never work for anyone other than the municipality on a matter that you worked on as a municipal employee.

If you participated in a matter as a municipal employee, you cannot ever be paid to work on that same matter for anyone other than the municipality, nor may you act for someone else, whether paid or not. The purpose of this restriction is to bar former employees from selling to private interests their familiarity with the facts of particular matters that are of continuing concern to their former municipal employer. The restriction does not prohibit former municipal employees from using the expertise acquired in government service in their subsequent private activities.

Example of violation: A former school department employee works for a contractor under a contract that she helped to draft and oversee for the school department.

(b) One year cooling-off period. For one year after you leave your municipal job you may not participate in any matter over which you had official responsibility during your last two years of public service.

Former municipal employees are barred for one year after they leave municipal employment from personally appearing before any agency of the municipality in connection with matters that were under their authority in their prior municipal positions during the two years before they left.

Example: An assistant town manager negotiates a three-year contract with a company. The town manager who supervised the assistant, and had official responsibility for the contract but did not participate in negotiating it, leaves her job to work for the company to which the contract was awarded. The former manager may not call or write the town in connection with the company's work on the contract for one year after leaving the town.

(c) Partners. Your partners will be subject to restrictions while you serve as a municipal employee and after your municipal service ends.

Partners of municipal employees and former municipal employees are also subject to restrictions under the conflict of interest law. If a municipal employee participated in a matter, or if he has official responsibility for a matter, then his partner may not act on behalf of anyone other than the municipality or provide services as an attorney to anyone but the city or town in relation to the matter.

Example: While serving on a city's historic district commission, an architect reviewed an application to get landmark status for a building. His partners at his architecture firm may not prepare and sign plans for the owner of the building or otherwise act on the owner's behalf in relation to the application for landmark status. In addition, because the architect has official responsibility as a commissioner for every matter that comes before the commission, his partners may not communicate with the commission or otherwise act on behalf of any client on any matter that comes before the commission during the time that the architect serves on the commission.

Example: A former town counsel joins a law firm as a partner. Because she litigated a lawsuit for the town, her new partners cannot represent any private clients in the lawsuit for one year after her job with the town ended.

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This summary is not intended to be legal advice and, because it is a summary, it does not mention every provision of the conflict law that may apply in a particular situation. Our website, www.mass.gov/ethics, contains further information about how the law applies in many situations. You can also contact the Commission's Legal Division via our website, by telephone, or by letter. Our contact information is at the top of this document.

Version 3: Revised October 7, 2009

ACKNOWLEDGMENT OF RECEIPT

I, _____, hereby acknowledge that I
(first and last name)
received a copy of the summary of the conflict of interest law
for municipal employees on _____.
(date)

Municipal employees should complete the acknowledgment of receipt and return it to the individual who provided them with a copy of the summary. Alternatively, municipal employees may send an e-mail acknowledging receipt of the summary to the individual who provided them with a copy of it.