

Ethics and Employee Conduct

Chapter 11-Highlights

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General Principles Of Ethical Conduct

Some of the problems you will face as a supervisor will not involve conduct or activities on the job. Problems that can be listed under **ethics, integrity, and conflict of interest** will arise generally because an employee has outside interests that become incompatible with Federal employment.

Because off-the-job conduct or interests are involved, the understandable inclination may be for a supervisor to "look the other way", unless an employee's day-to-day performance is affected. Unquestionably, a supervisor who meddles into an employee's off-duty conduct does so at some peril, particularly if the conduct involves something as elusive and ill defined as "ethics" or "conflicts of interest." But certain standards ARE imposed on all employees by statute, Executive Order, and regulation, and those standards **cannot** be ignored.

The broad principles set forth in Executive Order 12674 illustrate why it may be difficult to draw a clear line between ethics and employee conduct. Under that order, Federal employees are to avoid any action which "**might result in**" or which "**creates the appearance of:**"

- Using public office for private gain;
- Giving preferential treatment to any organization or person;
- Losing independence or impartiality of action;
- Making a Government decision outside official channels;
- Affecting adversely the confidence of the public in the integrity of the Government.

The scope and breadth of those principles are so all-encompassing that it becomes easier to understand why the following discussion may seem to overlap with other matters covered in this Handbook.

Your key regulations on this subject are:

- COMDTINST M5370.8B. (Standards of Conduct); I1-1
- COMDTINST M12750.4 (Discipline & Adverse Actions, Appeals and Grievances); and
- COMDTINST 12310.3 (Restrictions on Employment of Relatives).

As a supervisor, you are expected to:

- Provide positive leadership and to serve as an example to your employees.
- Instill in your employees a sense of loyalty, teamwork, and responsibility.
- Provide advice and assistance to individual employees who are in doubt about whether a particular activity is consistent with the prescribed standards of conduct.
- Treat all employees under your supervision in a fair and equitable manner.
- Avoid discrimination, and show proper regard for the dignity of your subordinates.

Questions about standards of ethical conduct should be referred to your designated Deputy Ethics Official.

Problem Areas Related To Ethical Conduct

Though the Code of Ethics for Government Service implies an almost infinite variety of possible ethical problem areas, long experience indicates that only a limited number of areas present problems on anything like a frequent basis. The more probable problem areas which you may encounter as a supervisor follow.

Restrictions On The Employment Of Relatives

The nepotism law (5 U.S.C. 3110) prohibits a public official (anyone, military or civilian, who has authority to appoint or promote or to recommend appointment or promotion) from employing, promoting or advancing a relative or advocating any such action for a relative. It does not prohibit relatives from working in the same agency or organization. But where one is in a direct supervisory position over a relative, this creates potential for problems that must be resolved.

If you have a relative (which is very broadly defined to include by blood or marriage, including very distant relatives) working lower in the chain of command, be cautious. Commandant Instruction 5370. (Standards of Conduct) requires all employees, military and civilian, to avoid any action, which might result in or create the appearance of giving preferential treatment to a person.

The employment of relatives in the same organization tends to have a number of undesirable results, some of which are as follows:

- It sometimes leads to requests to employing officers, which are difficult to refuse without deterioration in delicate relationships.
- It gives rise to appearance of favoritism in the consideration of applicants and employees.
- It complicates and increases the burden of day-to-day supervision.
- It complicates decision-making in connection with the assignment and separation of personnel.
- It breeds misunderstanding and resentment on the part of other employees and applicants, and suspicion on the part of the general public that the Coast Guard may not be safeguarding the taxpayers' interests in a strictly impartial and objective manner.

There is a common sense rule that greatly simplifies the subject of nepotism and other conflict of interest matters:

"Don't acquire or hold any interest in a concern that is or could be in any way involved with matters that you deal with on your job."

This "rule" is designed to keep you at a high enough plain to avoid the "grey areas" where your actions start to come into question. If questions still remain, you would be wise to seek advice from your Deputy Ethics Official or Civilian Personnel Office before you act.

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Outside Employment

The general principle is that employees must not engage in, any outside employment that might result in a conflict or apparent conflict with their Government responsibilities.

A rule of reason must be applied to this broad language, because almost any manner of outside employment "might" result in an "apparent conflict" with an employee's responsibilities. Government-wide OPM regulations are phrased in terms of outside employment or "other outside activity" not compatible with "the full and proper discharge duties and responsibilities of Government employment." By way of amplification, incompatible activities are described as those where an employee receives a fee or something of monetary value under circumstances that may result in a conflict of interest or that may create the **appearance** of such a conflict.

Also prohibited is outside employment that tends to impair the mental or physical capacity of an employee to perform assigned duties acceptably. Finally, a separate, criminal statute prohibits an employee from receiving salary or anything of monetary value from a private source as compensation for services to the Government.

Engaging in **conflicting** outside employment, or receiving money from outside sources for Government service is clearly within the realm of ethics and integrity. An employee might well be performing properly on the job, yet discredit the Government by use of his or her position to obtain payment of money or other benefits from outside interests.

Employment that interferes with the physical or mental ability of an employee to perform assigned duties falls more within the category of unacceptable performance (Chapter 8) than it does under the category of ethics or integrity. Under such circumstances, your concern, as a supervisor, should not be with the character of the outside activity, but with the fact that the employee is not performing acceptably. Approach this type of problem as a **performance** issue, and avoid the complications, which attend issues based upon outside employment.

In summary, there is no prohibition against employees holding outside jobs or having financial interests in private enterprises. In general, employees may engage in any outside activity, which is compatible with the full and proper discharge of the duties and responsibilities of their Government employment, which do not result in a **real or apparent conflict** of interest. To be on firm ground, in matters related to outside employment, you should familiarize yourself with COMDTINST M5370.8B. (Standards of Conduct).

Approval is usually appropriate:

- When the employment clearly cannot be construed as Coast Guard endorsement of a particular company or product;
- When the employer, or the type of employment, has no relationship to certification or licensing activities of the Coast Guard or receipt of Federal funds or contracts; and

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- When the proposed employment would not create a conflict of interest, or the appearance of a conflict of interest.

Political Activity

The following information is designed to highlight the key sources of authority in determining which political activities are acceptable for Coast Guard civilian employees, and which activities cross the line.

The Hatch Act.

I. The Hatch Act, 5 U.S.C. §§ 7321-7326, and its implementing regulations, 5 C.F.R. Parts 733 & 734, set forth permissible and impermissible forms of political activity by federal employees (it does not apply to non-appropriated fund employees). Most Federal government employees may take an active part in political management or in political campaigns while off duty. However, Career SES employees and administrative law judges are prohibited from engaging in partisan political activity.

II. If you are a Federal employee (other than an SES employee or ALJ) you may:

1. Be a candidate for public office in nonpartisan elections
2. Register and vote as you choose.
3. Assist in voter registration drives.
4. Express opinions about candidates and issues.
5. Contribute money to political organizations.
6. Attend political fundraising functions.
7. Attend and be active at political rallies and meetings.
8. Join and be an active member of a political party or club.
9. Sign nominating petitions.
10. Campaign for or against referendum questions, constitutional amendments, municipal ordinances.
11. Campaign for or against candidates in partisan elections.
12. Make campaign speeches for candidates in partisan elections.
13. Distribute campaign literature in partisan elections.
14. Hold office in political clubs or parties, including serving as a delegate to a convention.

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However, Federal employees may not:

1. Use official authority or influence to interfere with an election.
2. Solicit or discourage political activity of anyone with business before the agency.
3. Solicit or receive political contributions (may be done in certain limited situations by federal labor or other employee organizations).
4. Run for the nomination or as a candidate for election to a partisan political office.
5. Engage in political activity while:
 - on duty
 - in a government office
 - wearing an official uniform
 - using a government vehicle
6. Wear political buttons on duty.

III. If you are an Administrative Law Judge and Senior Executive Service employee, you may:

1. Register and vote as you choose.
2. Assist in voter registration drives.
3. Express opinions about candidates and issues.
4. Participate in campaigns where none of the candidates represent a political party.
5. Contribute money to political organizations or attend political fund raising functions.
6. Attend political rallies and meetings.
7. Join political clubs or parties.
8. Sign nominating petitions.
9. Campaign for or against referendum questions, constitutional amendments, municipal ordinances.

However, Employees in these categories may not:

1. Be candidates for public office in partisan elections.
2. Campaign for or against a candidate or slate of candidates in partisan elections.
3. Make campaign speeches.

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4. Solicit, accept or receive political contributions from any person; or sell tickets to political fund raising functions.
5. Distribute campaign material in partisan elections.
6. Organize or manage political rallies or meetings.
7. Hold office in political clubs or parties.
8. Circulate nominating petitions.
9. Work to register voters for one party only.
10. Wear political buttons at work.

IV. There are special rules that apply to the political activity of Federal employees residing in designated localities, including the suburbs of Washington, D.C. These rules, found in 5 C.F.R. Part 733, allow more flexibility in employee participation in local elections because of the high concentration of Federal workers living in these locations.

V. The U.S. Office of Special Counsel is responsible for investigating reports and complaints of Hatch Act violations. Their Hatch Act web site contains additional information on the range of permissible activities under the Act and its implementing regulations:

<http://www.osc.gov/hatchact.htm>

You should also contact your unit legal advisor if you need further assistance.

Teaching, Speaking, or Writing Activities

Coast Guard employees are encouraged to engage in these activities, but there are specific restrictions. For example, employees, when engaged in these activities, may NOT use information, which **has not been, or will not be** made available to the general public. In cases where an employee believes it to be in the public interest to use such non-public information, permission to do so must be requested from the employee's command. **Before** the information can be used, permission to use it must be given, in writing, over the signature of the appropriate official.

Meeting Financial Obligations

All employees are expected to discharge their financial obligations (including Citibank Government Travel Cards) and to maintain a reputation in the community for honoring debts. Federal, State, and local taxes are responsibilities, which all citizens properly should meet in accordance with the laws of the jurisdiction in which they reside.

The Coast Guard will not permit itself to be used as a collection agency, or to be placed in the position of determining the validity of contested debts. Additionally, the Coast Guard will not allow creditors and collectors access to employees, for the purpose of presenting or collecting claims, during working hours.

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If a debt complaint is received, you should contact the employee and require submission of a statement of the action, which the employee will take to resolve the matter. If the debt is valid, you should advise the complainant of the employee's intentions regarding payment. If the debt is disputed, you should so inform the complainant and advise that the Coast Guard will take no further action pending determination of the validity of the claim through proper civil proceedings.

Questions and Answers

1. Q. One of my employees frequently uses her private automobile to transport elderly people from a nursing home to their polling place. Is that a legal activity on her part?

A. In their off-duty time and in their private citizen capacities, civilian employees are permitted to drive voters to the polls on behalf of a political party or candidate.

2. Q. Under present Hatch Act Restrictions, just how active can a Federal employee be in a partisan political campaign?

A. Please see the political activity guidelines stated previously.

3. Q. The Hatch Act seems to impinge upon the first amendment rights of Federal employees. Doesn't that make the law unconstitutional?

A. No. The Hatch Act has been challenged several times in the Supreme Court. The Court has consistently upheld the constitutionality of the Act. The Court has said that the First Amendment right of political association and participation is not absolute. Therefore, Congress may regulate political activities of Federal employees to promote the efficiency and effectiveness of public service. The Supreme Court recognized, however, that the problem is to strike a proper balance between the interests of the employee, as a citizen, and the interests of the Government in fostering an independent civil service.

4. Q. If an unusual ethical question should arise, in relation to the conduct of one of my employees, where do you suggest I go to seek staff advice on the handling of the matter?

A. Since your question is open-ended, and might involve any one or more of several staff entities, we suggest that you start your inquiry with your Legal Officer who is familiar with issues related to Standards of Conduct.