



DEPARTMENTAL POLICY

TITLE	INCOMPATIBLE WORK ACTIVITIES		
POLICY OWNER	OFFICE OF HUMAN RESOURCES		
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DISTRIBUTE TO	ALL EMPLOYEES		
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NUMBER OF PAGES	1 of 10	ATTACHMENT	ATTACHMENT A

POLICY

It is the policy of the Department of Consumer Affairs (“DCA” and “Department”) that all policy directives and all laws, rules, and regulations concerning incompatible work activities are promoted and adhered to by its employees, governmental officials, and temporary staff.

APPLICABILITY

This policy applies to all employees, governmental officials, Board members and Bureau Advisory Committee members, and temporary staff of DCA, and any of its offices, divisions, bureaus, boards, programs, commissions, committees, and other constituent agencies. Within this policy, the terms “DCA” and “Department” apply to all of these entities.

PURPOSE

The purpose of this policy is to outline the State laws set forth in the standards of conduct with which State civil service officers and employees, and appointees and employees exempt from civil service are expected to comply. All employees of the DCA have a responsibility to their employer, their fellow employees, and the people of California to conduct themselves in an ethical manner so as not to bring discredit to themselves or the State and the Department.

AUTHORITY

- CA Government Code section 11475.10
- CA Government Code section 19990 et seq.
- CA Penal Code Section 502
- Executive Order B-66-2, "Standards of Ethical Conduct"
- Political Reform Act (CA Government Code section 81000 et seq.)
- Title II of the California Code of Regulations (CCR) section 599.859

PROVISIONS

Pursuant to Government Code section 19990 and Executive Order B-66-2, there is a code of ethical standards, which is applicable to State employees and gubernatorial appointees/exempt employees. This code of ethical standards is to be followed in addition to all other statutes, executive orders, or rules (i.e. the Fair Political Practices Act) which might affect questions of conflict of interest, incompatibility, or ethics relating to gubernatorial appointees/exempt employees.

Applicable portions of the Executive Order are stated below. Exempt employees are requested to carefully read these sections and to comply with both their letter and spirit:

Standards of Ethical Conduct for Exempt Appointees

"Standards of Ethical Conduct"

"No employment, activity, or enterprise shall be engaged in by any officer or employee of the Executive Department of the State which might result in, or create the appearance of resulting in any of the following:

- (1) **Using the prestige or influence of a State office or employment** for the officer's or employee's private gain or advantage, or the private gain or advantage of another.
- (2) **Using State time, facilities, equipment, or supplies** for the officer's or employee's private gain or advantage, or the private gains or advantage of another.
- (3) **Using confidential information** acquired by virtue of State employment for the officer's or employee's private gain or advantage, or the private gain or advantage of another.
- (4) **Receiving or accepting money or any other consideration** from anyone other than the State for the performance of an act which the officer or employee would be required or expected to render in the regular course or hours of his [or her] State employment or as a part of his [or her] duties as a State officer or employee.
- (5) **Performance of an act in other than his [or her] capacity as a State officer or employee** knowing that such an act may later be subject, directly or indirectly, to the

control, inspection, review, audit or enforcement by such officer or employee or the agency by which he or she is employed. [This would not preclude an "industry" member of a board or commission from performing the normal functions of his or her occupation.]

- (6) **Receiving or accepting, directly or indirectly, any gift**, including money, any service, gratuity, favor, entertainment, hospitality, loan, or any other thing of value from anyone who is doing or is seeking to do business of any kind with the State or whose activities are regulated or controlled in any way by the State, under circumstances from which it reasonably could be inferred that the gift was intended to influence him or her in his or her official duties or was intended as a reward for any official action on his or her part." (Emphasis added.)

Responsibility of All Employees, Both Exempt and Civil Service

Employees of the DCA have a responsibility to their employer, their fellow employees, and the people of California to conduct themselves in an ethical manner so as not to bring discredit to themselves or the State and the Department.

This policy must be followed by each employee of the DCA in order to avoid activities which are clearly inconsistent, incompatible, or in conflict with his or her official duties. Employees must review this policy with consideration toward their particular job duties and responsibilities.

This policy specifically relates to incompatible activities and does not include all provisions of law or regulations with which employees must comply.

If an employee is uncertain as to whether certain activity, employment, or enterprise is in violation of this policy, the employee should immediately consult with his or her supervisor who will indicate in writing whether the activity, employment, or enterprise is prohibited.

To protect the integrity of the California State Civil Service, State law sets forth standards of conduct with which State civil service officers and employees are expected to comply. Section 19990 of the Government Code requires that:

“A state officer or employee shall not engage in any employment, activity, or enterprise which is clearly inconsistent, incompatible, in conflict with, or inimical to his or her duties as a state officer or employee.”

Each appointing power shall determine, subject to approval of the California Department of Human Resources (CalHR), those activities which, for employees under its jurisdiction, are inconsistent, incompatible, or in conflict with their duties as State officers or employees. Activities and enterprises deemed to fall in these categories shall include, but not be limited to, all of the following:

Using Prestige or Influence

- (a) Using the prestige or influence of the State or the appointing authority for the officer's or employee's private gain or advantage or the private gain of another.

Examples of such activities include:

1. *Soliciting business from persons licensed by the employee's employer (DCA entity) under the guise that the licensee may receive special benefits from the employee's agency.*
2. *Soliciting money from a licensee or from other departmental employees for the employee's private gain.*
3. *Providing or using the names and/or addresses of licensees, vendors, or other entities subject to regulation by DCA for mailing lists or solicitation unless authorized to do so as part of the employee's duties.*
4. *Using the badge, uniform, or identification card of a State position for private gain or advantage.*

Use of State Time, Facilities, etc.

- (b) Using State time, facilities, equipment, or supplies for private gain or advantage.

Examples of such activities include:

1. *Using State vehicles or credit cards for personal gain or for personal transactions.*
2. *Using State letterhead stationery for private correspondence.*
3. *Using State office supplies, State postage stamping facilities, State copy machines, or computer equipment and software for home or personal business.*
4. *Selling products such as cosmetics, jewelry, stationery, plastics, etc., at times other than regularly scheduled breaks and lunch periods, or to other employees when they are not on such breaks.*

Using Confidential Information

- (c) Using, or having access to, confidential information available due to State employment for private gain or advantage or providing confidential information to persons to whom issuance of said information has not been authorized may be inconsistent, incompatible or in conflict with a State employee's or officer's duties.

Examples of such activities include:

1. *Disclosing confidential investigative reports or confidential examination materials or information.*
2. *Providing or using, unless authorized to do so by the Department or by someone to whom that responsibility has been delegated, licensee social security numbers, birth dates, gender, and/or complaint activity reports.*

3. *Requesting, acquiring, examining, or disseminating confidential or employee personnel records or personal information maintained by the Department unless authorized in the assignment of related duties.*
4. *Willfully misusing, misplacing, or destroying confidential information, including but not limited to, the disclosure of passwords or permitting access to computer information systems, programs, or other data to unauthorized personnel.*

Accepting Money or Other Consideration

- (d) Receiving or accepting money, or any other consideration, from anyone other than the State for the performance of his or her duties as a State employee.

Examples of such activities include:

1. *Requesting or accepting money, or other consideration, from applicants or licensees for the priority processing of license applications.*
2. *Charging a fee for helping an applicant complete documents for licensure.*

Performance of an Activity

- (e) Performance of an activity, in other than his or her capacity as a State employee, which is subject directly or indirectly, to the control, inspection, review, audit, or enforcement by the employee.

Each DCA entity should evaluate its own mission and job classifications to determine what activities are covered by this category. Specific applications may vary by the DCA entity. The following examples are provided for guideline purposes only:

1. *Engaging in a personal medical practice or activity which is regulated by the employee's licensing board, when the employee's duties are to review, inspect, audit, or enforce the regulated activity.*
2. *Engaging in a nursing practice or activity which is regulated by the employee's licensing board, when the employee's duties are to review, inspect, audit, or enforce the regulated activity.*
3. *Engaging in a construction business or activity which is regulated by the employee's licensing board, when the employee's duties are to review, inspect, audit, or enforce the regulated activity.*
4. *Engaging in an automobile related business or activity which is regulated by the employee's bureau, when the employee's duties are to review, inspect, audit, or enforce the regulated activity.*

5. *Engaging in a private legal practice where the employee represents clients in any matter or venture subject to the regulation of an agency in DCA, or represents any licensee in any enforcement matter before a DCA entity.*

Exception to this Provision

Each DCA entity may determine that it is in the interests of the agency to allow specified employees to engage in activities which would otherwise be prohibited under the above guidelines. Examples may include allowing employees holding professional or vocational licenses to engage in the licensed business or profession in order to maintain current skills.

Any DCA entity deciding to allow such employment or activities shall develop criteria to evaluate whether requests to engage in such employment or activities will be approved. The criteria must include, but need not be limited to: the time-base of the employee, the benefit to the organization of the employment or activity, a policy to avoid an actual conflict of interest or the appearance of a conflict of interest, and periodic review of the employment or activity.

Any employee currently engaged in, or desiring to engage in, such employment or activities shall submit a written request to his or her supervisor, describing the type and scope of outside employment or activity. The supervisor shall review the request and make a recommendation to approve or disapprove the request, based on the criteria developed by the DCA entity. The request and recommendation shall be submitted through the supervisory chain to the Program Manager, Division Chief, Bureau Chief, Executive Officer, Executive Director, Registrar, Commissioner, or designee who will make the determination. The approving officer may review the matter with the DCA Legal Office and request legal review and a legal opinion regarding the proposed activity. The decision of the approving officer shall be in writing with reasons set forth for the decision.

If an exception request is denied, represented employees may request further review in accordance with the terms of the employee's Memorandum of Understanding.

Gratuities, Gifts, and Other Things of Value

- (f) Receiving or accepting, directly or indirectly, any gift, including money, or any service, gratuity, favor, entertainment, hospitality, loan, or other thing of value from anyone who is doing or seeking to do business of any kind with the employee's appointing authority, or whose activities are regulated or controlled by the appointing authority under circumstances from which it could reasonably be substantiated that the gift was intended to influence the employee in his or her official duties, or was intended as a reward for any official action performed by the employee.

Although this section does not preclude acceptance of gifts, it clearly establishes that if the intent of the giver is to influence future, or reward past, official actions, the gift cannot be accepted.

Since determining intent may be difficult, the following guidelines are provided:

1. *Does the value of the gift, in itself, suggest an intent other than routine hospitality or gratuity? It may be useful to apply the Fair Political Practices laws as a general guide. These laws require that certain employees (**only those who meet specific "Designated Employee" criteria**) shall not receive gifts that exceed \$460 during any twelve-month period from any one source; establish a financial interest between the source and the recipient; and must report gifts worth \$50 or more. Thus, it follows that gifts approaching these value limits could raise questions under Government Code Section 19990. In addition, gifts considerably below these limits can also be inappropriate if they raise concern under any of the following standards:*
 - a. *Do the circumstances surrounding the gift suggest an improper intent? For example, a gift given on the eve of an important decision involving the donor is of much greater concern than a routine holiday gift or an invitation to an annual reception. Gifts directly or indirectly identified as a reward for specific past decisions or actions usually raise questions of improper relationships.*
 - b. *Is the gift characteristic of the gratuities, hospitalities, or other items typically received from organizations and/or individuals, similar to the donor? The key here is to not accept a gift from one party, which could be viewed as an attempt to gain an advantage over others who have a similar relationship with the recipient.*
 - c. *How strongly does the form of the gift suggest that it is a routine part of an on-going business relationship as opposed to something more? For example, occasional business lunches or the receipt of mementos bearing the name or insignia of the donor raise fewer questions than gifts of cash, merchandise, extraneous travel or entertainment that have value beyond the business relationship.*

With consideration to the above-noted guidelines and rules set forth by the Fair Political Practices Commission, the best practice for addressing gifts (i.e. food, beverages, goods, etc.) is to always report them upon receipt to supervisors, regardless of the value of the gift. The supervisor will confer with Legal Affairs in making a determination to accept or return the gift.

DCA employees should not accept gifts for performing their expected scope of duties, as it creates the perception that employees can be influenced by gifts and gratuities, especially if the giver is a licensee or someone who will benefit from our services. A gift offered to one individual should not be accepted. If a gift is presented to an office, and it is determined to be acceptable, the gift may be shared with all employees within the office.

Not Devoting Full Time Efforts to State Office or Employment

- (g) Subject to any other laws, rules, or regulations as pertained thereto, not devoting his or her full time, attention, and efforts to his or her State office or employment during his or her hours of duty as a State employee.

An example of such activity would be conducting private or personal business during an employee's regular hours of duty.

Other Acts that May Be Incompatible

The aforementioned limitations do not attempt to specify every possible limitation on employee activity that might be determined and prescribed under the authority of Section 19990 of the Government Code. If later experience shows a need for additions to, deletions from, or clarification of the aforementioned limitations, the DCA will request the approval of CalHR in making changes it determines necessary. Upon such approval, the listing will be amended. Nothing in this statement or listing should be construed by any employee as the sole provisions of law and administrative rules, which should be observed by each State employee of this Department.

Procedures for Determining Incompatible Work Activity

This procedure applies to all requests to engage in outside employment or activity other than a request for an exemption from the prohibitions contained in Government Code Section 19990(e). To determine whether an activity is an Incompatible Work Activity, the following procedures shall be performed:

- Any DCA employee who is engaging, or intends to engage, in outside employment or an activity or enterprise which may be in conflict with the provisions of this policy shall submit a written request for review of the matter to his or her immediate supervisor.

The written request from the employee shall include the following information:

1. The name of the employee.
 2. The name of the DCA entity, i.e., the office, board, bureau, committee, commission, division, or program under which the person is employed.
 3. The classification of the employee.
 4. The collective bargaining unit representing the employee, if applicable.
 5. The employee's duty statement, along with a statement describing the extent to which the employee's duties pertain to any confidential information that would come under his or her direct review.
 6. A detailed description of the specific activity in which the employee intends to engage.
- The immediate supervisor shall review the request and discuss it with the head of the DCA entity, as applicable.
 - The head of the DCA entity may review the matter with the DCA's Legal Office and request a legal opinion on whether the proposed activity is prohibited by the DCA's Incompatible Work Activity Policy.
 - If the activity is determined to be compatible with the employee's duties or position, the employee's supervisor will approve the employee's request, and

the employee may continue to, or proceed to, engage in the activity or business.

- If activity is determined to be incompatible with the employee's duties or position, the supervisor shall provide a written statement detailing the reason(s) for the denial to the employee.

Represented employees may appeal a denial in accordance with the terms of the employee's Memorandum of Understanding (MOU). Non-represented employees may appeal under CCR 599.859 to the DCA Director. In all cases, the DCA Director's decision shall be final.

Appeal Process

If an employee is notified that he/she has violated any provision of this statement, or if an employee is notified that any outside employment in which the employee wishes to engage is in violation of any provision of this statement, the employee may file an appeal as follows:

1. The employee may appeal the determination to the Director/Chief Deputy Director within ten (10) working days after receipt of denial. The appeal should contain:
 - a. A copy of the original request for clarification;
 - b. The response prepared by the Deputy Director of the Administrative Services Division; and
 - c. A statement explaining why the employee believes the employment, activity, or enterprise in question is not incompatible, inconsistent, or in conflict with his/her assigned duties as a State employee.
2. Within fifteen (15) working days after receipt of the appeal, the Director/Chief Deputy Director or his/her designee will meet with the Deputy Director of the Administrative Services Division and the appropriate Division Chief to review the appeal and issue a final determination. The employee will be advised of the time and date of said meeting and will be given an opportunity to attend.

If the employee submits proof to the Director/Chief Deputy Director that the length of the appeal process would cause him/her to lose the opportunity to participate in the employment, activity, or enterprise in question, an accelerated appeal procedure may be used. Under this procedure, the employee is required to submit the appeal to the Director/Chief Deputy Director within five (5) working days of receipt of the determination from the Deputy Director of the Administrative Services Division. The Director/Chief Deputy Director or her/his designee shall respond with a final determination within fifteen (15) working days.

Service on Governmental Bodies

Service on a local appointed or elected governmental board, bureau, commission, committee, program, or other body or as a local elected official by DCA attorney shall not, by itself, be deemed to be inconsistent, incompatible, in conflict with, or inimical to, the

duties of the attorney as a State employee and shall not result in the automatic vacation of either office.

Nothing in this section shall be construed to prohibit a DCA attorney from serving on any other appointed or elected governmental board, commission, committee, or other body, consistent with all applicable conflict-of-interest statutes and regulations and judicial canons of ethics.

RECOMMENDED IMPLEMENTATION

This policy shall be distributed to all new employees in new employee packets or transfer packets for their review and acknowledgment.

In addition, the Department will emphasize this policy by distributing it on an annual basis to all employees to ensure everyone completes the "Incompatible Work Activities Acknowledgment" (Attachment A).

VIOLATIONS

Failure to follow any of the provisions of this policy is cause for discipline, which may include termination of employment.

In addition, any tampering, interference, damage, or unauthorized access to computer data or computer systems may constitute a criminal violation of Penal Code section 502.

REVISIONS

Determination of the need for revisions and/or the status or maintenance of this policy should be directed to the Division of Program & Policy Review at (916) 574-7970.

ATTACHMENTS

A. Incompatible Work Activities Acknowledgement OHR 14-01



ACKNOWLEDGEMENT

Incompatible Work Activities OHR 14-01

I hereby acknowledge receipt of the Department of Consumer Affairs (DCA) Incompatible Work Activities Policy OHR 14-01.

- ___ 1. I understand that I shall read the Policy and become familiar with its contents.
- ___ 2. I understand that I need to take all reasonable steps to comply with this policy.
- ___ 3. I understand that this completed Acknowledgement will become a permanent part of my Official Personnel File (OPF).
- ___ 4. I understand that my signature on this Acknowledgement does not modify my employment relationship with DCA as set forth in the most current Memorandum of Understanding (MOU) appropriate to my employee bargaining unit.

(Printed Name)

(Signature)

(Date)

(Board/Bureau/Committee/Commission/Program/Division/Office)

Original: Office of Human Resources (Official Personnel File)
Copies: Employee, Supervisor