

ETHICS FLASH

POST-GOVERNMENT EMPLOYMENT

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This Ethics Flash is
brought to you by:

18 U.S.C. §§ 207 & 208

5 C.F.R. § 2635.604

5 C.F.R. § 2641.201-202

SO LONG, FAREWELL . . . TIME FOR YOU TO EMBARK ON A NEW ADVENTURE!

So, the day has finally arrived—it's time for you to consider departing the Government. But we can't say goodbye to you that easily! Whether your retirement is approaching or you are considering taking a new job outside the Government, there are rules you need to be aware of—to avoid both compromising your current job and causing you and your future employer headaches in your new role.

Why do these rules exist, both for before and after your departure? If you're an avid Ethics Flash reader, you may see that the underlying Federal ethics principles related to our previous topics (e.g., gifts, travel, and political activities) are relevant in Post-Government Employment

(PGE), too. For instance, Government personnel—both civilian and military—have a duty not to use official positions for personal gain, not to misuse information obtained



in the course of their Government duties, and to be good stewards of Government resources.

The way these principles shake out in the PGE world is twofold, both of which we'll

discuss in this Flash. First, we'll talk about what it means to be seeking employment and your responsibilities to the DAF. Second, we'll talk about the PGE restrictions, which address the types of bans that may be applicable based on the types of work you've undertaken for the Government.

If you've attended a PGE briefing, you know that these rules are important because they are governed by criminal statute as the penalties for noncompliance can be serious.

But that doesn't mean you aren't able to take a job with industry or elsewhere—lots of folks do! That's why we're here—to help you navigate your path forward and avoid obstacles. So polish up that resume and read on!

SEEKING EMPLOYMENT—DON'T WORK ON MATTERS INVOLVING A POSSIBLE EMPLOYER

If you're starting to look for a new job before departing your Department of the Air Force (DAF) role, follow this key rule: Once you start seeking employment with a prospective employer, you may not take any official action that could affect the financial interests of that prospective employer.

To avoid conflicts of interest while conducting your job search, it may be necessary

to formally disqualify yourself in writing from working on official matters involving a prospective employer.

Pretty straightforward, right? Yes—but because we're lawyers, you know we can't just stop there. We'll talk about what seeking employment means on the next page, but if it is appropriate for you to disqualify yourself during your job search, here's how it works:

Disqualification is primarily accomplished by not participating in particular matters with the prospective employer. In addition, it is appropriate for you to make proper written notification of your recusal to your supervisor, leadership, colleagues, and/or subordinates (as appropriate) such that your organization can plan how to handle the matter(s) in question without your involvement.

FAQS ON “SEEKING EMPLOYMENT”

Q: What does “seeking employment” mean for disqualification purposes?

A: Conducting mutual negotiation discussions or communications with a view toward reaching an agreement regarding possible employment regardless of whether specific terms and conditions of employment are discussed.

Q: Okay, thanks for the legalese. But what does that actually mean in practice?

A: It’s fact-based, but communicating specific interest in a job, submitting an application or resume, and the steps that follow—interviewing, negotiating terms and salary, etc.—would be considered seeking employment.

Q: What about networking? People in industry I work with as part of my official duties

know I’m retiring next year.

A: We understand that many people identify job opportunities by networking with industry personnel they encounter in the course of their official Government duties. Social conversations (outside of duty time) on the topic are fine, but be mindful of when this crosses the threshold of seeking employment.

Q: If someone reaches out to me for a job opportunity and I’d have to disqualify myself from my duties to consider it, can I tell them “come back to me in six months” to avoid disqualification now?

A: No. This is considered “deferring” employment—not rejecting it. Only an outright rejection (or not responding to a communication) is sufficient to avoid disqualification.

Q: What happens if I don’t get the job? Or if I never hear back about my application?

A: You are no longer seeking employment when (1) you reject the possibility of employment and all discussions terminate, or (2) when two months have elapsed after sending a resume or application to a potential employer without response. Disqualification is no longer necessary.

Q: I remember from previous ethics trainings that there are a lot of rules on accepting gifts from outside sources. What if a company offers to pay for my travel to interview with them?

A: Thanks for paying attention during ethics briefings! Please refer to [Ethics Flash 24-03](#), where we discuss this as part of gifts of travel.

What about posting a resume or referencing on social media (e.g., LinkedIn) that I am looking for a job? Is that seeking employment?

No, merely posting a generic resume—not for a specific job—or referencing online that you are open for opportunities does not constitute seeking employment. But if someone replies with interest, you would need to disqualify yourself from duties relating to that company or reject the communication.

REPRESENTATION BANS—18 U.S.C. § 207(a) LIFETIME AND TWO-YEAR RESTRICTIONS

When a former Government employee decides to represent another entity on the same matter they handled as a Government employee, the “switching sides” undermines the public’s confidence in the fairness of Government proceedings and can create the impression that personal influence gained by Government affiliation is being used as an undue advantage.

Therefore, this statute sets out two of the main restrictions on communicating with—and physically appearing before—Government personnel on behalf of a future employer. Please note that these restrictions do not prevent you from accepting future employment or compensation from an employer—they just limit the type of work you are permitted to do while in your new role.

Let’s get into it!

Lifetime/Permanent Restriction: After you leave Government service, you may never make representations to the Government on behalf of **someone else** regarding a **particular matter involving specific parties** that you worked on while in Government service.

Two-Year Restriction: For two years after leaving Government service, you may not make representations to the Government on behalf of **someone else** regarding a **particular matter involving specific parties** that you did not work on yourself but was **pending under your official responsibility** during your last year of Government service.

Reading these, you might be thinking, “Wait, does this mean I can’t work in the same field where I spent my Government career?” The answer is no—it’s not that broad. The terms in the stat-

utes themselves are specifically defined to narrow the applicability of these restrictions.

You may also be thinking, why did the previous section have different colors? It’s not just because the Air Force Ethics Office is excited about Halloween candy (no endorsement of a specific bagged chocolate candy that comes in a rainbow of colors, as well as in Peanut, Crispy, and because it’s 2024—Pumpkin Pie—varietals). Instead, we’ve highlighted those terms because their definitions are crucial to whether someone is subject to the restriction. Below we’ll discuss these terms with some real-world applicability.

Particular matter involving specific parties: This is typically the most difficult item to evaluate. The statute defines “particular matter” as “any investigation, application,

REPRESENTATION BANS, CONTINUED

request for a ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding.”

Matters of general applicability are not particular matters. For example, legislation, rulemaking, or policymaking that would affect a broad Government or industry contingent (e.g., a regulation establishing new health and safety standards), are not particular matters.

However, if you were involved in defending the Government in a challenge to a policy, that challenge would be a particular matter. In addition, specific parties need to be identified for the ban to apply—for acquisitions, that is typically when the Government receives indications or

expressions of interest from offerors (e.g., receipt of proposals)—but it may be sooner.

Someone else: You are only subject to these bans if you are making a representation on behalf of any other person or entity. Going off the previous example, if you were involved in defending the Government against the challenge to a policy, you could later self-represent to Government personnel on that matter, but you could not represent another entity on the matter (including your own business, if you start one).

Pending under your official responsibility: For the two-year ban, a particular matter needs to be pending under your official responsibility in your last year of Government service. This means you have

the authority to approve, disapprove, or direct Government action, either yourself or through subordinates. If your position description specifies that you are responsible for a certain class of actions, and an office or person subordinate to you makes decisions on those actions, these are imputed to you for purposes of this ban—even if you haven't worked any personally.

Please note that these are representation bans—which means a prohibition on you making a communication or appearance. These bans *do not* prohibit you from working behind-the-scenes on matters in which you would be prohibited from making a communication or appearance.

Do I only need to worry about PGE restrictions if I was involved in acquisitions?

No. While acquisition work can often lead to PGE bans due to contracts being “particular matters,” there are many categories of PGE restrictions that could apply to you depending on your status (civilian or military), duties, type of future employment, and more.

“ETHICS” V. “PGE” V. “30-DAY” LETTERS —YAY, MORE TIME WITH LAWYERS!

If you've dipped your toes into the job-seeking waters, you may have heard people talking about “ethics letters,” “PGE letters,” or “30-day letters,” and wonder to yourself—what are these? Am I required to get an ethics letter before departing? Do I have to get three different letters?

Well, first up—the good news is that all three of these terms refer to the same thing—an ethics review of the

restrictions that apply to a particular PGE opportunity based on the job duties contemplated and the individual's previous responsibilities.

Whether you're required to obtain an ethics review before accepting a job depends on if you've had a specific acquisition-related role due to your job or rank. For everyone else, you are not required to obtain formal PGE advice prior to taking a job.

What we've found, though, is that even for non-covered individuals, a number of defense contractors themselves require applicants to get ethics reviews. If you come across this, please reach out to your servicing legal office for guidance on obtaining an ethics letter or completing a self-certification on possible conflicts of interest to submit to your prospective employer.

WHO WE ARE AND WHAT'S UP NEXT

The Air Force Ethics Office directs the daily activities of the DAF Ethics Program. We serve as legal counsel to the Secretariat, Air Staff, and Space Staff. While we are happy to assist with any ethics issues, individuals outside of Headquarters should consult with their local ethics counselor. Should you have

any questions, please contact us at SAF.GCA.Ethics.Workflow@us.af.mil.

There's much more in the PGE realm (so much so that the Air Force Ethics Office has a 30 page handout explaining all the rules in detail... available upon request!). This is part 1 on PGE. A future edi-

tion will discuss additional rules for senior personnel (e.g., general officers & Senior Executive Service); working while on terminal leave; Procurement Integrity Act requirements; and foreign government employment restrictions for military members/retirees (spoiler alert—don't do that without permission!).