

Outside Employment May Lead to Blown Federal Careers

With President Barack Obama proposing to end a two-year pay freeze for federal employees, some fiscal relief may be in sight for them. It won't be much, though. The proposed federal civilian across-the-board pay increase is only 0.5 percent.

It's likely that this modest proposal will drive some federal employees to generate extra funds from outside sources. Federal employees, however, run the risk of jeopardizing their primary job when they secure outside employment without proper authorization.

The Standards for Ethical Conduct for Employees of the Executive Branch states: "An employee shall not engage in outside employment or any other outside activity that conflicts with his official duties." Usually, conflicts of interest are of concern when a financial interest links the employee's federal job and his or her outside employment.

A conflict of interest could also arise if the outside employment gives the appearance of affecting the employee's impartiality due to the nature of some personal or business relationships.

Federal employees should check whether their agency has any specific regulations prohibiting outside employment without approval.

In some cases, regulations governing the propriety of outside employment are sweeping. For example, the Drug Enforcement Administration (DEA) requires all agency employees to receive prior approval for outside employment. The agency defines "outside employment" as any non-DEA job, including self-employment, employment by a third party, participation in a business venture, and hobby income.

Recently, the Merit Systems Protection Board, in *Prather v. Dept. of Justice*, sustained the removal of a DEA criminal investigator who engaged in multiple specifications of unauthorized outside employment. The income-generating activities included: providing instruction at a martial arts school he founded; teaching a course for business executives; and operating a company he founded to market an invention he patented—a bulletproof briefcase. This last company reported \$9,800 in profits in 2004. While the appellant argued that the DEA's definition of outside employment was overly broad, the MSPB sustained all of the specifications relating to this misconduct.

When federal employees request prior authorization for outside employment, they must accurately detail the nature of the outside work. Once the outside work is approved, if during the course of the outside engagement the income-generating activity becomes substantially different from how it was explained to agency officials, the employee has the obligation to disclose any inconsistencies to the agency or face potential disciplinary action.

Another mistake federal employees can make in regard to securing outside employment is not receiving prior approval from the correct authority. For example, in the case of *VanFossen v.*

Dept. of Housing and Urban Development, the U.S. Court of Appeals for the Federal Circuit affirmed an MSPB decision sustaining the removal of a HUD supervisory appraiser of single and multi-family dwellings.

Even though he received prior approval for outside employment from his supervisor, only HUD deputy counselors (i.e. agency regional counselors) could grant authorization for outside employment. Consequently, the employee was found to have engaged in outside employment without authorization, and his supervisor's approval was deemed null and void.

Federal employees facing disciplinary actions for engaging in outside employment should immediately consult with a federal employment attorney. Depending on the circumstances, a lawyer could argue the outside employment did not raise conflict of interest concerns or that the work did not qualify as outside employment.

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