

## Seeking Employment in the Private Sector

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### References:

**Federal Acquisition Regulation, Part 3 - "Improper Business Practices and Personal Conflicts of Interest"** <https://www.acquisition.gov/far/current/html/FARTOCP03.html#wp265938>

**OGE Publication, "Understanding the Revolving Door: How Ethics Rules Apply to Your Job Seeking and Post-Government Employment"**

[https://www.ethics.usda.gov/science/docs/phrevdoor\\_07.pdf](https://www.ethics.usda.gov/science/docs/phrevdoor_07.pdf)

**18 United States Code § 208 - "Acts Affecting a Personal Financial Interest"**

<https://www2.oge.gov/web/oge.nsf/Criminal%20Statutes/A298A38BC89439B385257E96006A90EC?opendocument>

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Federal ethics law does not prohibit or even discourage executive branch employees from seeking employment in the private sector. However, in limited instances, contacts with potential employers may raise conflict of interest concerns with respect to an employee's Government job.

### **Disqualification requirement when seeking employment**

When a particular matter comes before an executive branch employee and that matter will have a direct and predictable effect on the financial interest of a person or entity with whom the employee is seeking employment, the employee is disqualified from working on the matter. Where an employee's employment seeking has advanced to negotiations with a potential employer, a criminal statute, 18 U.S.C. Section 208, Acts affecting a personal financial interest, compels disqualification. Negotiations are communications between an employee and a potential employer mutually conducted with a view toward reaching an employment arrangement.

Short of negotiating for employment, an employee is considered to be "seeking employment" with a potential employer when contact between an employee and a person about possible employment occurs, regardless of who initiates that contact. While sending a resumé or job application generally is considered to be seeking employment, an employee is not considered to be seeking employment when the employee sends a resumé to a person who is affected by the performance of the employee's duties only as part of a class. On the other hand, there is no exception to the seeking employment disqualification requirement for bulk mailings of resúmes or job applications.

An employee must remain disqualified until either the employee or the potential employer rejects the possibility of employment. A response that merely defers discussion until the foreseeable future does not constitute rejection. If an employee said, in response to an employment proposal, "I would like to discuss the opportunity, but not until next week," there would be no rejection. A response from the employer indicating "the application will be kept on file" can be considered a rejection.

If an employee accepts an offer of employment with a private sector entity, the period of disqualification will continue until the employee terminates Government service. If employment negotiations prove unsuccessful, the disqualification requirement ends. In some cases, however, the agency may nevertheless impose a further period of disqualification where there are concerns about the employee's impartiality.

When an employee is disqualified from participating in a particular matter, the person responsible for the employee's assignments should be notified. Notification permits a supervisor to minimize any disruption of the agency's mission by arranging assignments accordingly. An employee responsible for his own assignments should take whatever steps are necessary, such as notifying co-workers, to ensure compliance with the disqualification requirement. If the agency determines that disqualification from certain assignments materially impairs an employee's ability to perform the duties of the position, the agency may allow the employee to take leave or take other appropriate administrative action.

In some cases, an agency may authorize an employee to participate in particular matters from which the employee would otherwise have to be disqualified. The procedures and form of the authorization may vary depending on whether the employee is negotiating for employment or is otherwise seeking employment. Where negotiations are involved, an agency may only waive the disqualification requirement in accordance with 18 U.S.C. Section 208.

#### **Headhunters and other intermediaries**

An employee may wish to use an employment search firm or some other intermediary to pursue employment opportunities. An employee must avoid participating in particular matters affecting a potential employer at the point when the intermediary has contacted an employer whose identity is known to the employee. If an employee is contacted about a job by an employer's intermediary, the disqualification requirement is triggered as soon as the employee learns the identity of the intermediary's client.

#### **Gifts concerns**

An employee may accept interview expenses from a potential employer, including meals, lodging, and transportation, if they are customarily provided in connection with employment discussions. An employee can also accept an offer from a "prohibited source," such as an agency contractor, to recommend the employee for employment or pass on the employee's resumé without running afoul of the standards concerning acceptance of gifts from prohibited sources.

#### **Procurement rules when seeking employment**

Under procurement law, an employee who personally and substantially participates in an agency procurement over \$100,000 must report in writing to the employee's supervisor and designated agency ethics official any contacts with or by a bidder or offer regarding possible non-Federal employment. The employee making the report must either reject the possibility of non-Federal employment or recuse themselves from further personal and substantial participation in the procurement until the agency authorizes the official to resume participation.

Employees are strongly encouraged to contact their [Ethics Advisor](#) for specific guidance on Agency procedures.

#### **Webinar**

A [webinar](#) on Job Seeking and Post-government employment is available on our website for viewing.

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