



OTHER EMPLOYMENT AND CERTAIN VOLUNTEER ACTIVITIES

I. PURPOSE:

The purpose of this policy is to provide standardized procedures for making a determination whether other employment and certain volunteer activities may violate the *West Virginia Governmental Ethics Act* W. Va. Code § 6B-1-1, *et seq*, and/or the West Virginia Division of Personnel (DOP), *Administrative Rule*, W. Va. Code R. § 143-1-17.1, which, in pertinent part, prohibits an employee of the State of West Virginia and its political subdivisions from engaging in other employment or volunteer activities that conflict with the employee's primary employment with the State of West Virginia.

The information and procedures in this policy should not be construed to supersede any State or federal law or regulation. In the event of any inconsistencies between policy and law and/or regulation, the statutory and/or regulatory provisions shall prevail.

II. DEFINITIONS:

- A. Agency. – Any authority, board, bureau, commission, division, or other entity of state government, however, designated, transferred to, or incorporated in one of the departments created in W. Va. Code § 5F-1-2, as well as any affiliated county or municipal agencies. Provided that individual districts, offices, regions, sections, and units within the same agency, however, designated, shall not be considered a separate agency.
- B. Appointing Authority. – The executive or head of a department or agency who is authorized by statute to appoint employees in the classified or classified-exempt service. By written notification to the Director of Personnel, the appointing authority may delegate specific powers authorized by this rule to persons who satisfy the definition of employee as established by the DOP *Administrative Rule*, W. Va. Code R. § 143-1-1 *et seq*.
- C. Classified Service. – Those positions which satisfy the definitions for "class" and "classify" and which are covered under the DOP merit system standards as defined in the DOP *Administrative Rule*.
- D. Other Employment. – Any form of employment or business relationship outside an employee's primary employment in the classified service involving the provision of personal services by the employee and from which the employee receives compensation.
- E. Volunteer Activity. – Any type of volunteer activity involving the provision of personal services by the employee to the benefit of another person, group, or organization and from which the employee receives no compensation or social gain.

III. POLICY:

State service shall be the primary employment of every employee. Other employment/volunteer activity must not interfere with, conflict with, or have the appearance of a conflict with an employee's primary employment with the State; conflict with the interests of the State agency; interfere with the performance of the employee's official duties; use proprietary State information; create the appearance of official State action, or entail appearing before the State agency for which the employee is employed on behalf of the other employer or volunteer organization in any capacity. Employees called or ordered to active duty by a properly designated authority are the only exception to this expectation. In accordance with the DOP *Administrative Rule*, all officers and employees of the State, county, or municipal government hired for permanent employment in the classified service who are ordered or called to active duty by properly designated authority are entitled to leave. While on military leave, military service is the employee's primary employment.

General prohibitions for all employees engaging in other employment/volunteer activity include:

- A. An employee shall not provide for personal gain any information or services related to the duties and responsibilities of their primary position with the State.
- B. An employee shall not use State work time to perform work for another employer or volunteer activity.
- C. An employee shall not use State supplies, technology, or equipment to perform work for the other employer or volunteer activity.
- D. An employee shall not allow the duties of the other employment/volunteer activity duties to interfere with the assigned duties and responsibilities of their primary employment with the State.
- E. If applicable, an employee must respond to any on-call demands of their primary employment with the State, as directed by their supervisors during periods of which they are engaged in other employment/volunteer activity.
- F. An employee shall not use the primary employment with the State to motivate or provide preferential treatment to any person involved with the other employment/volunteer activity because of services being rendered to their family members.

IV. STANDARDS:

The appointing authority shall consider the following factors when determining if a review of other employment/volunteer activity is required by the West Virginia Ethics Commission and/or the State Personnel Board. A request for a determination is not required for certain volunteer activities which clearly do not conflict with the interests of the agency and have no nexus to the duties of the primary state employment. These may include but are not limited to participation in non-partisan civic organizations, philanthropic activities, social clubs, athletics, and religious organizations, etc.

- A. An employee is required to obtain an Ethics Opinion if the appointing authority has reason to believe: The other employment/volunteer activity is with a person or business over which the employee directly, or through subordinates, exercises regulatory authority in the employee's official capacity as a State employee.

1. The employee will receive private pay for providing information or services that the employee's position with the primary employer is required to provide to the public at no cost.
 2. The employee could access or use confidential agency information for the benefit of the other employer/volunteer activity. The employee may use State time, supplies, technology, or equipment to perform work for the other employer or while engaging in the volunteer activity.
- B. The West Virginia Ethics Commission has determined an Ethics Opinion is not required in instances where an employee desires to perform services for multiple State employers. However, the appointing authority must still evaluate the request to ensure that while working for the primary State employer, the employee does not perform work for other State employers in violation of the *DOP Administrative Rule*. Prior to commencing employment with a second state agency, an employee must consult with both agency human resources as multiple appointments impact compensation and benefits at each agency. The position in which the employee is budgeted at a Full-Time Equivalent (FTE) of 1.0 shall be identified as the employee's primary position. In the event the employee holds two FTE or two Part-Time positions, the primary position will be the position in which the employee was first employed.
- C. The appointing authority shall deny the request for other employment/volunteer activity if it is determined through an Ethics Opinion a conflict exists between the employee's primary employment with the State and the requested other employment/volunteer activity.

If the Ethics Opinion is inconclusive, the appointing authority may deny the request for other employment/volunteer activity or request a determination by the State Personnel Board because the appointing authority has reason to believe:

1. The other employment/volunteer activity may conflict or give the appearance of a conflict with the mission or goals of the agency.
2. The other employment/volunteer activity may interfere with the performance of the employee's official duties.
3. The employee will use or appear to use information obtained in connection with the employee's official duties, which is not generally available to the public.
4. The other employment/volunteer activity may reasonably be regarded as official State action. The appointing authority must provide a copy of the Ethics Opinion when requesting a determination by the State Personnel Board.

PROCEDURES:

Appointing authorities shall notify all employees of the provisions of Section 17.1 of the *DOP Administrative Rule*, and provide them with copies of this policy, or a means to access it, so that employees may submit requests for a determination regarding other employment/volunteer activities prior to engaging in such employment/activities. An appointing authority may modify the Request for Determination Regarding Other Employment and Certain Volunteer Activity form to include appropriate internal review and approval levels, but must retain the specified content and criteria, as defined in this policy.

- A. Prior to engaging in other employment/volunteer activity, an employee must obtain a determination that there is no conflict with their primary employment with the State.
 1. An employee shall notify their primary employer with the State of the intent to begin other employment/volunteer activity by:
 - a. Completing Part I of the Request for a Determination Regarding Other Employment and Certain Volunteer Activity form (DOP-OE1), providing a functional job description of your primary duties. A class specification does not provide sufficient position-specific duties and will not be accepted.
 - b. Signing the request acknowledging your understanding of and compliance with the Other Employment and Certain Volunteer Activities policy (DOP-P21).
 - c. Submitting the signed request form to the immediate supervisor or the appropriate agency representative.
 2. Upon receipt of the request for a determination, the immediate supervisor shall advise the employee that prior to commencing or continuing such other employment/volunteer activity, a determination as to the potential for conflict between their primary employment with the State and the proposed other employment/volunteer activity must be obtained.
 3. An employee must submit a separate request for a determination when any change of duties in their primary employment with the State or other employment/volunteer activity occurs and for each other employment or volunteer activity, the employee desires to pursue.
 4. If, at any time, a potential conflict between the primary employment with the State and other employment/volunteer activity occurs, the employee shall simultaneously inform both the immediate supervisor of both their primary employment with the State and the other employer/volunteer activity.
 5. An employee shall terminate the other employment/volunteer activity at any time the primary State employer determines the other employment/volunteer activity interferes with the employee's performance of their primary job duties of the State or conflicts with the interests of the State.
- B. Within thirty (30) calendar days of receipt of the completed Request for Determination Regarding Other Employment and Volunteer Activity form, the appointing authority or designee shall notify the employee of the determination and take one of the four actions, as outlined below.
 1. Determine there is no conflict with the primary employment with the State. Complete Part III of the form and forward it to the appropriate primary employing agency office; OR
 2. Determine there is no conflict with the primary employment with the State but that certain limitations and/or restrictions are necessary. The limitations shall be noted on Part III, Step 3, of the form and forwarded to the appropriate primary employing agency office; OR
 3. Notify the employee the request requires further review as provided in Section IV of this policy due to a potential conflict with the employee's primary employment with the State and that the other employment/volunteer activity must not commence or must not continue until a final determination is made; OR

4. Determine there is a conflict with the primary employment with the State.
 - a. Complete Part III of the form and provide a justification for the determination. This justification may be based on a determination by the West Virginia Ethics Commission or the State Personnel Board that the other employment/volunteer activity would be inappropriate or unacceptable.
 - b. Notify the employee that the other employment/volunteer activity must not commence, or must not continue.
 - c. Specify the deadline for the termination of the other employment (based on the degree of conflict) or volunteer activity.
 - d. After being informed that the request was denied, if the employee chooses to commence or continue the other employment/volunteer activity, the employer shall notify the employee that failure to comply with the appointing authority's lawful directive is deemed insubordination for which disciplinary action, up to and including dismissal may be issued.
 - e. Forward the form to the appropriate primary employing agency office for processing.
- C. The appointing authority or designee shall provide a copy of the final determination to the employee, the immediate supervisor, and the DOP.

VI. REFERENCES:

- A. W. Va. Code § 6B-1-1, *et seq*, *West Virginia Governmental Ethics Act*.
- B. West Virginia Division of Personnel, *Administrative Rule*, W. Va. Code R. § 143-1-17.1, *Other Employment and Certain Volunteer Activity*.

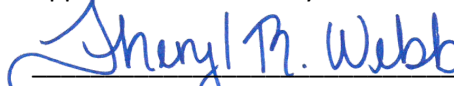
VII. EFFECTIVE DATE: October 1, 2003.

VIII. REVISION:

- A. Previous Revisions: October 1, 2003, and May 1, 2007.
- B. Latest Revision: June 15, 2022

IX. POLICY NUMBER: DOP-P21.

Approved and Issued By:



Sheryl R. Webb, Director

Date: June 6, 2022