POST-EMPLOYMENT RESTRICTIONS (REVOLVING DOOR)

Leaving State Service

The revolving door statute is designed to keep former State employees from using their former government connections to benefit themselves, their clients or the business for which they work after leaving State government. It does this (1) by restricting for two years the contacts former State employees can have with the agency where they worked and (2) by restricting the work they can do on matters on which they worked while in State service. The first restriction is known as "the two-year bar" and the second as "the lifetime bar."

The Two-Year Bar

The Public Officers Law prohibits all former State employees from "appearing or practicing" before their former agencies for two years after they leave their State jobs. The State Ethics Commission (the "Commission") has interpreted "appear" to include more than a physical appearance at an agency office. It means that former State employees may not write letters to the former agency, prepare or submit contract proposals to the agency, call agency staff on official business or review agency files. The bar on practicing means they may not represent a client before the agency. For example, they may not represent clients with respect to reviews or audits being conducted by the agency.

The two-year bar also prohibits former employees from rendering services for compensation on a matter before the agency. This means that a former State employee cannot, as part of his or her job, work on a specific matter which will be presented to his or her former agency. Such "back room" work is barred even if the employee does not appear before the agency or put his or her name on a document that is submitted to the agency.

The restrictions of the two-year bar apply only to appearing, practicing or working on matters before an employee's former agency. They do not prohibit any activity before other agencies of State government or any other government.

The Lifetime Bar

Former State employees may never appear before any agency or be paid for work on matters or transactions in which they were directly concerned and personally participated while working in State government. This rule prohibits appearances before any government body, including the State Legislature, Congress, and federal, State and local executive branch agencies, or, indeed, anywhere, where the appearance relates to a matter on which the employee worked while with the State.

The critical issue for lifetime bar purposes is whether the matter or transaction on which the individual is working is the same as one on which he or she worked while with the State. In its advisory opinions, the Commission has determined

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1 For purposes of the two-year bar, the former agency of all OMH employees, including facility personnel, is all of OMH, not the specific facility at which the individual was employed. This means that a former employee of Rockland Psychiatric Center ("RPC"), for example, may not appear or practice before any other OMH psychiatric center or OMH Central Office within two years of resigning from OMH/RPC.
that bills introduced in different legislative sessions may constitute the same transaction, particularly when they affect the same or substantially the same population and present the same issues. Programs that affect the same or substantially the same population, provide the same or substantially the same service and have the same goals are considered the same transaction for purposes of the law, even when funding sources and procedures may change.

Most of these situations are based on the specific facts involved, and the Commission determines each matter presented to it on a case by case basis.

Exceptions

Although the rules prohibit former State employees working as paid consultants to a government, there is an exception for former State employees who become employees of the federal government or any State or local government. There are also exceptions which, in certain circumstances, permit State employees to work for their former agencies (1) during times of disaster emergency, (2) to continue to provide treatment at their former facilities to patients they treated while in State service, and (3) when the agency needs the former employee’s unique expertise for the public’s benefit.

Employees who knowingly and intentionally violate these provisions may be subject to a civil penalty of up to $40,000 plus restitution of any associated gain.

For questions and additional information, please contact:

- For facility employees, the facility’s designated Ethics Officer
- For Central Office employees, Crystal Scalesci, Agency Labor Relations Representative, Bureau of Central Office Personnel Services, at (518) 474-2413 or cohrcls@omh.state.ny.us.
- For general questions, Tom Cioffi in Counsel’s Office, (518) 474-1331, t cioffi@omh.state.ny.us.
- For questions related to research, academic issues or relationships with pharmaceutical companies, Robin Goldman in Counsel’s Office, (518) 474-1331, rgoldman@omh.state.ny.us.