

ETHICS FURLOUGH GUIDANCE

1. This information paper provides general ethics guidance for Army employees who want to work for a non-federal entity while furloughed.
2. Army employees should be mindful that they remain subject to the “normal” ethics rules (e.g., Joint Ethics Regulation), when furloughed. Some of the more common rules to be aware of are below:

A. Disqualification. Once an employee starts to seek outside employment, the employee is disqualified from personally and substantially participating in a particular matter that will have a direct and predictable effect on the financial interests of a current or prospective employer. Where an actual conflict arises, DoD regulations require the employee to provide a written disqualification statement to his supervisor.

B. STOCK Act Notice Requirement. For Public Financial Disclosure Report (OGE Form 278) filers, regardless of whether the outside employment is with a prohibited source, the STOCK Act requires that they notify the appropriate ethics office within 3-days of starting negotiations for outside employment. If the employee’s duties could have a direct and predictable effect on the financial interests of a prospective employer, the employee must file a written disqualification statement with his ethics office, and a copy provided to the employee’s supervisor.

C. Dual Compensation Prohibition. Army employees may not be paid by another to perform their official duties. A contractor cannot hire an Army employee to perform the employee’s official duties, even while on furlough.

D. Prior Approval. DoD requires prior supervisory approval for outside employment with a prohibited source (e.g., DoD contractor; an entity whose interests may be substantially affected by performance or nonperformance of the employee’s official duties; or an organization a majority of whose members are in one of those prior-listed groups) for ALL financial disclosure filers (OGE Form 278 and 450).

E. No Representational Activities. Since Army personnel remain Federal employees while on furlough, they generally are prohibited by law from representing anyone outside the Government before a Federal agency or court, if the Government is involved in the particular matter. This means any outside employment may not entail representation back to the Federal government on particular matters where the Government is a party or has an interest.

F. Impartiality Disqualification. The impartiality rules generally require that for one year following the termination of outside employment, the Army employee will remain disqualified from officially participating in particular matters that could affect the financial interests of their former employer.

3. Army personnel should remember that the financial interests of a person with whom the employee is negotiating for employment are imputed to the Army employee, even if the position is uncompensated. "Employment" is any form of non-Federal employment or business relationship involving the provision of personal services by the employee, whether to be undertaken at the same time as or subsequent to Federal employment. It includes but is not limited to personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner or trustee. It may also include service on boards of directors of non-profit organizations. The following example provided by OGE is illustrative:

An employee of the Department of Health and Human Services is invited to a meeting with officials of a nonprofit corporation to discuss the possibility of his serving as a member of the corporation's board of directors. Service, with or without compensation, as a member of the board of directors constitutes employment for purposes of this subpart.

Bottom line: If DoD personnel are considering an opportunity to serve in an outside position in their personal capacities, whether the position is compensated or uncompensated, they should immediately disqualify themselves from participating in DoD matters that could affect their prospective employer to avoid a conflict of interest. (DoD employees are prohibited from serving in their official capacity on boards of non-federal entities, with very few exceptions.)

Note: Military members are not subject to furlough. However, the above rules on outside employment also apply to military members.

Please contact your local ethics officials if you have any questions.