
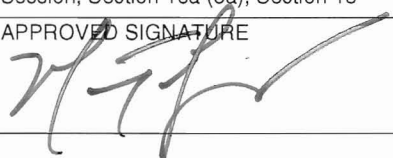


Oregon Department of Transportation  POLICY	NUMBER PER 01-02-02	SUPERSEDES 07/06/06
	EFFECTIVE DATE 12/20/07	PAGE NUMBER 01 OF 07
	VALIDATION DATE	
	REFERENCE ORS Chapters 240, 244, 823.007, OAR 740-020-0010 to 740-020-0020; DAS Policy HRSD 10.000.01; SB 10 of the 2007 Legislative Session, Section 16a (5a), Section 18	
SUBJECT CODE OF CONDUCT	APPROVED SIGNATURE 	

PURPOSE

Public service is a public trust, one that requires integrity and trustworthiness. This Code of Conduct policy provides guidelines on appropriate behavior related to certain conduct of Oregon Department of Transportation (Department) employees, particularly in relationship to employment by contractors, both prior to and after employment with the Department.

The policy is effective immediately. To the extent contract specifications are necessary for its implementation, the policy applies to the extent such specifications are included in current or future contracts.

BACKGROUND

Department employees are public servants who have the privilege and honor of serving the people of Oregon. As public servants, they hold a public trust and expectation that they exercise their official powers and use the Department's resources only to advance the public interest. Department employees must carry out their duties fairly, without bias or favoritism.

It is the Department's expectation that this policy will help Department employees live up to that expectation by providing guidelines relating to proper conduct. Obviously no policy can prescribe what should be done on every occasion because circumstances vary. If you need help or advice about a particular situation or circumstance, you are encouraged to contact your manager, supervisor, or the Safe Haven Representative before you make a decision or take action.

The Department has established the DecisionPLUS model to assist employees in making defensible business decisions. When making work-related decisions, PLUS asks employees to consider the following questions:

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|---------------------------|---|
| P = Policies & Procedures | <i>Is the decision consistent with ODOT's policies, procedures, and guidelines?</i> |
| L = Laws and Regulations | <i>Is the decision acceptable under applicable laws, rules, and regulations?</i> |

U = Universal Values

Does the decision conform to ODOT's mission, values, and concern for public perception?

S = Self Standards

Does the decision satisfy my personal definition of right, good, and fair?

Oregon Revised Statutes (ORS) Chapter 244 defines actual and potential conflicts of interest for all public officials and employees. Those statutes are administered by the Ethics Commission. In addition, other statutes and administrative rules, for example ORS 823.007 and Oregon Administrative Rules (OAR) 740-020-0010 to 740-020-0020, relating to the Department's enforcement of economic regulation of motor carriers, apply to specific conduct or activities which may constitute actual and potential conflicts of interest for Department employees. It is not the intent of this policy to supplant those statutory provisions; this policy explains a specific type of conflict of interest, which is referred to as a "revolving door" situation. The purpose of this policy is to provide standards for a revolving door situation - leaving the Department for private employment and joining the Department from private business.

When Department employees leave state employment and go to work in the private sector for contractors who contract with the Department to provide goods and services, including consulting and construction services, and when the Department hires employees who had previously worked for contractors providing such goods and services, there is a concern with potential conflicts of interest and a public trust issue if there is any perception of favoritism. To address these concerns, the Department adopts this Code of Conduct for revolving door situations.

Whenever Department employees have a revolving door situation, it is important that they inform their Appointing Authority without delay. Issues of potential or actual conflict of interest will be assessed by the appropriate Appointing Authority, in consultation with Human Resources and the Safe Haven Representative as appropriate, and thereafter will be handled consistently with applicable law, policy, and contract provisions. Violation of this policy may result in corrective or disciplinary action, up to and including termination of employment.

No aspect of this policy is intended to conflict with the provisions of a current collective bargaining agreement. For those employees represented by a union, it may be necessary to also consult the current collective bargaining agreement for additional information. Should a conflict between this policy and applicable contract provisions exist, the contract shall prevail.

POLICY

The Revolving Door

When employees of firms which compete for, or have, contracts with the Department come to work for the Department and when Department employees go to work for firms which compete for, or have, contracts with the Department, questions may arise about where information is obtained, what actions are taken, what decisions are made, and whether any unfair competitive benefit or advantage is gained by the employer or employee in both the prior and new employment environment.

The Department's objective is to limit and, when possible, eliminate any perception that there is an advantage gained by a contractor or employee because of job transitions. Therefore, the following policy is adopted and applied based on two categories of employees: outgoing and incoming employees.

Former Department Employees

The Department's procurement office shall develop and include language in all procurements and contracts requiring contractors to declare if a former Department employee works for the contractor and an explanation of the role the employee now serves for the contractor. The specification will specify when and how such declaration will be made for each procurement, and shall only require such identification within one year of the date such former employee leaves the employment with Department. Each contractor declaration shall include a signed statement by the former Department employee of their proposed role for the contractor in the particular procurement and any resulting contract.

The specification will also state that use of a former Department employee by the contractor on the same, or substantially similar procurement, for which the employee performed a role or function for the Department, unless mitigated to the satisfaction of the Department, is prohibited for a period of one year following separation of employment with the Department. Roles and functions of particular concern include drafting specifications, reviewing or scoring a bid or proposal, authorizing service or assigning work, or awarding a contract. The Department may determine that the role or procurement is not substantially similar because of differences in location of the project or work, or because of the type and method of procurement, or because the role performed was minor in nature, such as a technical sufficiency review. Examples of mitigation that may, in appropriate situations, be acceptable to the Department include separation of certain decision-making functions concerning the project, not using the employee in preparation of proposals but allowing them to perform work on a project, and not having the employee have direct contact with Department staff formerly under his/her supervision.

Failure of a contractor to disclose such relationship or to remedy a violation of the specification will result in the rejection of the contractor's bid or cancellation of the contract with the Department as well as being grounds for cancellation of contractor prequalification or designation of a contractor as ineligible for future procurements as not being a responsible bidder.

In addition, a person may not have a direct beneficial financial interest in a public contract that was authorized by such person acting in the capacity of a public official or as a member of a board, commission, or other governing body of a public body of which the person was a member when the contract was authorized, for a period of two years after the person ceases to hold a position as a public official. This prohibition does not apply if the person did not participate as a member of the authorizing governing body in the authorization of the contract.¹

¹ Senate Bill 10 of the 2007 Legislative Session, Section 23a.

Incoming Department Employees

Employees entering employment with the Department may not, for one year following employment with an ODOT contractor, prepare plans or specifications, review or score a bid or proposal, or award a contract for a Department procurement where their former employer may submit, or has submitted, a bid or proposal, without declaring the potential conflict and receiving a statement of approval or mitigation by the Appointing Authority.

Should a Department employee learn of a contractor/former employer bid or proposal submission on which the employee has worked or may be asked to perform work, he/she shall immediately inform the Appointing Authority and take no further action concerning the procurement or other decision making related to the procurement without approval or mitigation by the Appointing Authority.

Supplemental Employment

A Department employee whose employment relates to a regulatory function, a procurement process, or a departmental service for which the employee authorizes or assigns work may not make decisions or take actions on behalf of the Department concerning a business or activity under which the employee holds a supplemental job or has ownership or part ownership of a business, through or under which the employee derives payment, wages, benefits, or interests. General responsibilities concerning these circumstances are discussed in the General Employee Responsibilities section below.

Note: No aspect of this section is intended to conflict with provisions of any current collective bargaining agreement. For those employees represented by a union, please also refer to applicable contract provisions covering outside or supplemental employment.

General Employee Responsibilities

An employee shall not use the prestige or influence of the State for his/her private gain or advantage or for the private gain or advantage of another.

An employee shall not use state time, information, materials, services, facilities, equipment, vehicles, or supplies for his/her private gain or advantage or the private gain or advantage of another, unless it is allowed by other policies or a department-approved program.

An employee shall not engage in an act as a public official outside of his/her official capacity.

An employee shall not engage in any outside activity or employment knowing that this activity or employment may later be directly or indirectly subject to a control, inspection, review, audit or enforcement by the employee in his/her official capacity.

An employee shall not disclose confidential Department information to anyone to whom issuance of this information has not been authorized.

An employee shall not, except with prior written permission of his/her manager or supervisor have oversight authority or input in the hiring of or purchasing from contractors who are relatives.

An employee shall not, except with prior written permission of his/her manager or supervisor, in committing state resources, contract with or purchase from another Department employee or that employee's relatives.

An employee may accept an honorarium as a result of participating in an event in his/her official capacity; he/she shall then turn it over to the Department's Financial Services Branch.

In any calendar year an employee shall not, nor shall a relative or member of the household of the employee, directly or indirectly solicit or receive any gift(s)² with a combined total value from a single source in excess of \$50 from anyone who has interest in state business or that the employee should reasonably have known has such interest, or from anyone with whom the Department does business.³

DEFINITIONS

Many of the terms found in this section are defined in ORS Chapter 244. The explanations below are provided as a summary of the statutory language; please check the statutory citations given below for the exact statutory definitions.

Appointing Authority: An officer or agency having power to make appointments to positions in the state service or to take other personnel actions.⁴

Conflict of Interest:

An *actual conflict of interest* is any action, decision, or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private monetary or financial benefit or detriment of the person, the person's relative, or any business with which the person or a relative is associated.⁵

A *potential conflict of interest* is any action, decision, or recommendation by a person acting in a capacity as a public official, the effect of which could be to the private monetary or financial benefit or detriment of the person, the person's relative, or any business with which the person or a relative of the person is associated.⁶ Potential conflict of interest is from the perspective of a reasonable person who has knowledge of the relevant facts.

Gift: Something of economic value given to a public official or relative or member of the household of the public official, including the full or partial forgiveness of indebtedness, which is not extended to others who are not public officials or the relatives or member of the household of the public official on the same terms and conditions. It is also something of

² See Senate Bill 10 of the 2007 Legislative Session, Section 16a (5a) for definition of "gift."

³ Senate Bill 10 of the 2007 Legislative Session, Section 18.

⁴ ORS 240.01 5(1); DAS Policy HRSD 10.000.01

⁵ ORS 244.020(1)

⁶ ORS 244.020(11)

economic value given to a public official or relative of member of the household of the public official, for less than that required from others who are not public officials. It also means something received that the public cannot obtain for the same price or conditions. Gift does not include certain items, including: an employee's salary; presents from relatives or members of the household of the public official; and under certain circumstances, food or beverage consumed by a public official acting in an official capacity.⁷

Honorarium: A payment or something of economic value given to a public official in exchange for assistance rendered which custom or propriety prevents the setting of a price. Assistance rendered includes, but is not limited to, speeches or aid given in connection with an event.⁸

Member of the Household: Any person who resides with the public official.⁹

Public Official: Any person who serves the Department as an elected official, appointed officer, employee, agent, or in any other capacity, irrespective of whether the person is compensated or not.¹⁰ Contractors and permittees are not public officials.

Relative: The spouse of a public official, the domestic partner of the public official, any children of the public official or of the public official's spouse, siblings, parents of the public official or of the public official's spouse, any individual for whom the public official has a legal support obligation, and any individual for whom the public official provides benefits arising from the public official's public employment or from whom the public official receives benefits arising from that individual's employment.¹¹

GUIDELINES

An employee shall inform his/her manager or supervisor in writing of any situations addressed in the above Revolving Door, Supplemental Employment, or General Employee Responsibility sections. The manager shall respond to employee's inquiry in writing. The manager or supervisor may mitigate the situation by assigning another person to be responsible for the work or by giving instructions on how to resolve the issue. The manager will seek the assistance of the Appointing Authority in consultation with Human Resources and the Safe Haven Representative as appropriate.

If an employee does not feel that the Appointing Authority's action is appropriate, the employee may make a written request to the Deputy Director to review the determination. This request will include a summary of the determination made and information as to why the employee does not feel that this is appropriate. Copies of this information will be provided to the appropriate labor organization by the Agency. The Deputy Director will convene a group to review the situation with an appropriate labor representative who will have a status as an observer/participant. This group will provide their findings to the Deputy Director and the employee. Based on this information, the Deputy Director will respond to the employee

⁷ ORS 244.020(5a)

⁸ ORS 244.020(6)

⁹ ORS 244.020(9)

¹⁰ ORS 244.020(13)

¹¹ ORS 244.020 (14)

within seven business days of the request for matters that are time sensitive. If there is no response within the time frame noted above, the circumstances will be deemed not to present a violation of this policy.

RESPONSIBILITY **ACTION**

Managers and Supervisors	Ensure that each employee understands the expectations contained in this policy and acts accordingly. Periodically review the Department's mission and values with each crew or team and discuss and clarify guidelines and instructions contained in this policy. Seek written approval from the Appointing Authority and proper staff on behalf of an employee when mitigation of a situation is requested.
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All Employees	Understand and follow this policy. Seek advice from their manager, supervisor, or the Safe Haven Representative if questions occur concerning proper actions.
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