

# **Conflict of Interest Law**

## **Mandatory Education and Training Guidelines**

### **Introduction**

Chapter 28 of the Acts of 2009, the ethics reform law, imposes mandatory education and training requirements on public employers and public employees. The law authorizes the Commission to establish procedures to implement and ensure compliance with these requirements, and these Implementation Procedures are issued pursuant to that authority. The requirements can be summarized as follows: Each year, every state, county, and municipal employee must be given a summary of the conflict of interest law prepared by the Ethics Commission and, every two years, they must complete an online training program prepared by the Commission. Every municipality must designate a liaison to the Commission. All records of compliance with these requirements must be retained for 6 years. These requirements apply to all public employees, as defined by the conflict of interest law and described below, except to the extent that an employing public agency exempts certain categories of employees from these requirements in accordance with the guidelines set forth below (see section 2). These requirements also apply to regional public entities, as discussed below in section 6. Former public employees are not subject to these requirements.

### **What's New in this Version of these Procedures**

This version is a revision of the Implementation Procedures issued by the Commission in October 2009, based on requests for further clarification on certain topics. This version includes:

- An alphabetical topic index, to make it easier to find particular topics of interest
- An expanded discussion of which private consultants, vendors and contractors are subject to these requirements (Section 1)
- A discussion of how the requirement applies to advisory committees (Section 1c)
- New exemptions (Section 2)
- Exemptions for employees who cannot comply with requirements because of limited English fluency or reading comprehension, special needs, or leaves of absence (Section 7)
- A clarification of Employers' obligations (Section 8)
- Questions, Comments and Suggestions

The Commission is committed to working with those affected by the law to implement it as efficiently as possible. Questions about these procedures may be directed to the Commission's Legal Division by calling (617) 371-9500, or submitted electronically on this website. In addition, the Commission invites suggestions for improvements to these procedures. You may

email suggestions to David Giannotti, the Commission's Chief of the Public Education and Communications Division, at [dgiannotti@eth.state.ma.us](mailto:dgiannotti@eth.state.ma.us), or by calling 617-371-9505.

## **Index of Topics**

This Index of Topics is intended to help users find the relevant section of these procedures more easily.

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## **1. WHO IS CONSIDERED A PUBLIC EMPLOYEE?**

### **a. Anyone who holds an office or position with, or provides services to, a public entity, is a public employee.**

The statutory definitions of who is a state, county, and municipal employee for purposes of the conflict of interest law are very broad. These definitions are not limited to paid, full-time public employees. Everyone who performs services for, or holds an office or position with, a state, county, or municipal agency is subject to the conflict of interest law. This is true whether the person is paid or unpaid, is a volunteer, works part-time, is employed only for part of the year or on a seasonal basis, or is a "special" employee. The law applies to these individuals, regardless of whether the employee is elected, appointed, or working under a contract.

The conflict of interest law applies to employees of regional entities, including employees of regional school districts and educational collaboratives, regional retirement systems, regional transit authorities, regional planning commissions, regional councils of governments, and independent entities such as water and sewer districts and fire districts and prudential committees. Employees of regional entities are considered to be employees of each municipality that is a member of, or participates in, the regional entity.

An individual who has a contract with a state, county or municipal agency to provide services to that agency is a public employee for purposes of the conflict of interest law. For example, a professor who contracts with a state agency to serve as an expert witness is a state employee for purposes of the conflict of interest law, and a musician who contracts with a school department to instruct students in trumpet playing is a municipal employee for purposes of the conflict of interest law.

**b. Vendors and contractors:** Most employees of vendor and contractor firms which do business with public entities are not public employees, but "key employees" of such private firms are public employees.

Public agencies frequently enter into contracts with private firms and corporations. In most cases, the employees of private vendor and contractor firms that do business with public agencies are not public employees for purposes of the conflict of interest law, and are not subject to the mandatory education and training requirements that apply to public employees. For example, the employees of a firm that delivers art supplies to school departments are not public employees, and are not subject to the mandatory education and training requirements. Neither are the employees of a bank that provides financial services to various municipalities.

However, in certain limited circumstances, an employee of a private firm may also be a public employee for purposes of the conflict of interest law and the new training and education requirements. If a public agency expressly or impliedly contracts for the personal services of a particular individual employed by a private firm, then the particular employee is a "key employee" and is considered a public employee for purposes of the conflict of interest law. For example, if a public agency hires a real estate consulting firm to provide development services, and the contract specifies that a particular partner will provide those services, then the partner is a public employee. Similarly, if both parties to such a contract intend that a particular partner will provide those services but do not say so expressly in the contract, the partner will be a public employee. By contrast, if a school department contracts with a school bus company to drive its students and the company can assign any of its drivers to do that work, the drivers are not public employees for conflict of interest law purposes. Employees of consultant firms who provide specialized services, such as legal, design, or architectural services, are more likely to be considered "key employees" than are employees of firms that provide goods or non-specialized services (See Advisory 06-01). Questions about whether employees of a particular firm are public employees for purposes of the mandatory education and training requirements may be

directed to the Commission's Legal Division by calling (617) 371-9500, or submitted electronically on this website.

**c. Advisory Committee members may be public employees.**

Public agencies and officials sometimes seek advice and input on public policy questions from advisory committees. Advisory committee members are considered public employees, and therefore are subject to the mandatory education and training requirements of the conflict of interest law, in some circumstances. If the advisory committee was legally required to be created (such as by a statute, regulation, or ordinance), has formal procedures and work product, and performs functions or tasks expected of governmental employees, its members will be considered public employees. However, if the advisory committee was created by discretionary action, has no formal procedures or work product, and represents viewpoints of persons and entities outside of government, then its members will likely not be considered public employees. Questions about whether members of a particular advisory committee are public employees for purposes of the conflict of interest law, and the mandatory education and training requirements, may be directed to the Commission's Legal Division by calling (617) 371-9500, or submitted electronically on this website.

## **2. EXEMPTIONS FROM THE MANDATORY EDUCATION AND TRAINING REQUIREMENTS**

Ideally, all public employees in the Commonwealth would be trained in the conflict of interest law. However, cost and other practical circumstances require that a principled way be found to exempt certain categories of public employees from the mandatory education and training requirements without compromising the objectives of those requirements. The Commission therefore establishes the following guidelines to enable public employers to determine which of their employees are exempt from the mandatory education and training requirements.

Each public employer may use the guidelines below to develop a list of positions for which distribution of summaries of the conflict of interest law and/or online training are not required. Employers are not required to obtain the Commission's approval of such lists, but must maintain such lists as public records and provide them to the Commission on request. If the Commission determines that such a list includes positions which should be subject to the requirements of distribution of summaries and/or online training, it may direct that such positions be removed from the list. Questions about whether particular positions should be subject to the mandatory education and training requirements may be submitted to the Commission's Legal Division by calling (617) 371-9500, or submitted electronically on this website.

**a. Positions for which distribution of summaries and online training are required**

- All elected public positions, whether compensated or uncompensated.

- All compensated, full-time public employee and official positions.
- All compensated, part-time public employee and official positions, (except for temporary or seasonal employee positions in which employees do not have or exercise governmental authority and do not participate in or have responsibility for government decision-making, contracting, hiring, investigation or any other discretionary governmental action, as set forth below in subsection b).
- Any position, including volunteer positions, whether chosen by election, appointment or otherwise, in which the employee personally serves in or provides services to a public agency, whether paid or unpaid, and participates in or has responsibility for any government decision-making, contracting, hiring, investigation or any other discretionary government action or otherwise has or exercises governmental authority.

**b. Positions which may be exempted from the distribution of summaries and the online training requirements**

A public employer may choose to exempt any or all of the following positions from one or both of the mandatory training and education requirements:

Unpaid volunteer positions in which employees do not have or exercise governmental authority and do not participate in or have responsibility for government decision-making, contracting, hiring, investigation or any other discretionary governmental action.

*Examples:*

- library volunteer positions in which employees reshelve books or read books to children during a story hour;
- school volunteer positions in which employees come into the schools a few times a year to help with parties and projects, shelve books in the school library, or chaperone field trips and other school events;
- volunteer positions in which employees pick up litter at parks or beaches, or participate in a town "Clean Up Day";
- Senior Center or Parks and Recreation volunteer teacher positions;
- Positions in which volunteers assist with an event, such as a town July 4<sup>th</sup> celebration, by selling tickets, engaging in face painting, or helping "police" the grounds.
- Short-term temporary or seasonal compensated positions in which employees do not have or exercise governmental authority and do not participate in or have responsibility for government decision-making, contracting, hiring, investigation or any other discretionary governmental action.

*Examples:*

- poll worker positions.
- non-supervisory seasonal positions, such as, for example, lifeguards and snowplow operators.
- substitute teachers who work less than one day per week.
- Participants in senior citizen tax abatement programs pursuant to General Laws chapter 59, section 5K, and Senior Corps, the Retired and Senior Volunteer Program, Foster Grandparents, Senior Companions and comparable programs.
- Medical Reserve Corps volunteers.
- High school, college and graduate school students participating in summer and work-study employment, whether paid or unpaid.
- Participants in programs of the Department of Mental Health who are patients in a therapeutic program that includes employment.
- Individual vendors and contractors to public agencies who provide one day or less of services per calendar year.
- Participants in volunteer programs whose names are not available or known to any public agency, such as, for instance, town residents who help shovel snow or clean up after a flood.

### **3. DISTRIBUTION OF SUMMARIES OF THE CONFLICT OF INTEREST LAW**

The Commission has prepared, and will update as necessary, summaries of the conflict of interest law for state, county, and municipal employees, respectively. These summaries are available on this website in English, Spanish and Portuguese. The summaries must be distributed to public employees as described below unless the employing agency has exempted the employee's position from this requirement pursuant to section 2 above. Summaries are available [here](#).

Most employees of private firms that are contractors, vendors, or consultants to a public agency are not required to be given summaries of the conflict of interest law. An employee of a vendor or contractor firm is only required to be given a summary if the public agency expressly or impliedly contracted for that particular individual's personal services, thereby making him or her a public employee for purposes of the conflict of interest law. This is explained in more detail in section 1 above.

#### **a. Responsibility for distribution**

Responsibility for distributing summaries and collecting acknowledgments of receipt is as follows:

- Appointed state and county employees shall be furnished with the summary by, and file an acknowledgment of receipt with, the employee's appointing authority, or his or her designee.
- Elected state and county employees shall be furnished with the summary by, and file an acknowledgment of receipt with, the Commission.
- Municipal employees shall be furnished with the summary by, and file an acknowledgment of receipt with, the city or town clerk.

There are several ways for state and county appointing authorities (or their designees), and city and town clerks, (hereinafter collectively referred to as "employers"), to comply with the requirement that they distribute summaries of the law and maintain acknowledgments of receipt by their employees. The Commission will accept any of the ways set forth below, or a combination of them, as satisfying the requirements of the law.

#### **b. Compliance deadlines for summaries**

Every public employee must be provided with a summary of the law within 30 days of becoming such an employee, and annually thereafter. Employers must distribute the summaries to all current employees each year by the end of December.

Each employee must provide to his or her employer, as defined herein, an acknowledgment of receipt within ten (10) business days of receipt of the summary.

#### **c. Distribution of summaries**

Summaries may be distributed in paper or electronic format. If summaries are distributed in paper format, they may be distributed as a stand-alone document or included with some other item distributed to employees (such as paychecks), or employees may be required to pick them up at a designated time and place. If summaries are distributed in electronic format, they may be downloaded from this website and emailed to employees. Employers may use an employee intranet or any other convenient electronic means to distribute summaries. Employers may combine these methods as they find convenient to reach all employees.

#### **d. Acknowledgments of receipt**

Employees' acknowledgments of receipt of the summary of the law may be accepted and maintained in paper or electronic format. Employees may use the acknowledgment of receipt form included at the end of each summary, or the employer may create its own acknowledgment form. Alternatively, employers may maintain a logbook for acknowledgments of receipt and require employees to sign it. Employers may scan paper acknowledgment forms and maintain them electronically for purposes of complying with the conflict of interest law.

If an employer distributes the summary electronically, a return email from the employee will satisfy the statutory requirement of a written acknowledgment of receipt. If an employer

distributes the summary electronically to employees using the employees' work email accounts, the employer can request "read receipts" for its emails to employees, and the "read receipts" will satisfy the statutory requirement of a written acknowledgment of receipt, except that any employee whose electronic mail is opened by someone else must respond personally to acknowledge receipt of the summary. Electronic acknowledgments of receipt may be maintained electronically. Employers may also adapt their intranets to provide records of receipt of summaries, or use any other convenient electronic means.

Employers need not choose one of these methods, but may combine methods as they find convenient to reach all employees. Whatever method or methods the employer adopts, the acknowledgments must be maintained in such a manner so as to be readily accessible if requested by the Commission. In particular, state and county appointing authorities (or their designees), and city and town clerks, must maintain records of acknowledgments in a manner that would permit them to comply with requests by the Commission for production of the acknowledgment forms of specific employees and notification of the names of employees who have not complied.

Each employee must provide to his or her employer, as defined herein, an acknowledgment of receipt within ten (10) business days of receipt of the summary.

#### **e. Record-keeping requirements**

State and county appointing authorities (or their designees), and city and town clerks, must maintain an annual list of all employees to whom summaries are distributed during that calendar year, and such list must indicate as to each listed employee whether the employee provided an acknowledgment of receipt. In addition to the annual list, the acknowledgment of receipt itself must be maintained as a record of the agency. Both the annual lists and the acknowledgments of receipt must be maintained for six years.

## **4. ONLINE TRAINING**

On December 10, 2012, the Commission will make available two new online training programs for public employees; one for state and county employees, and one for municipal employees. The programs provide information on the requirements of the conflict of interest law, including the requirements for former public employees. All state and county employees will be required to complete the state-county employee program, and all municipal employees will be required to complete the municipal employee program. The online programs are available from the Commission's website. Questions about which program public employees should complete by may be directed to the Commission at (617) 371-9500. Unless the deadline has been extended by the Commission, all state, county, and municipal employees must complete the online training program that is on the Commission's website by April 5, 2013 or, if hired after that date, within 30 days of becoming a public employee, and then once every two years afterwards, unless their

employing agency has exempted them from that requirement pursuant to section 2 above. Public employees must provide a certificate of completion to their employers, as defined herein, and the employers must retain such certificates for six years (see subparagraph c. below). A public employee who completes the training currently on the Commission's website will not be required to take a new online training program until the next two year period.

Most employees of private firms that are contractors, vendors, or consultants to a public agency are not required to complete the online training. Employees of vendors and contractors are only subject to the online training requirement if the public agency expressly or impliedly contracted for that particular individual's personal services, thereby making him or her a public employee for purposes of the conflict of interest law. For instance, if a public agency hires an office cleaning firm and the firm can assign any of its workers to clean the public office, the workers are not considered public employees for purposes of the conflict of interest law and are not required to complete the online training. Similarly, if a town hires a bus company to drive its students and the company can assign any of its drivers to do the work, the drivers are not required to complete the training (although school bus drivers employed directly by a town will be required to do so). This is explained in more detail in section 1 above.

While we encourage attendance at the Commission's seminars, such attendance is not a substitute for participating in the required online training and does not fulfill the online training requirement.

There are several ways for public employees to comply with the online training requirement and for their employers to comply with the requirement that they maintain certificates of completion. The Commission will accept any of the ways set forth below, or a combination of them, as satisfying the requirements of the law.

**a. Compliance deadlines for online training**

Every state, county, and municipal employee not exempted from training as described above in section 2 must complete the Commission's online training program once every two years. New employees must complete the online training program within 30 days of becoming such an employee, and once every two years thereafter. All public employees were first required to complete the online training program by April 2, 2010. The next compliance deadline was therefore April 2012, however the Commission put the compliance deadline on hold while it worked to make new online training programs available. During 2012, state, county and municipal agencies were given the option of having their employees either wait for the new programs or else comply using the old program. For the upcoming compliance period, all public employees must complete an online program by April 5, 2013 unless their employer required them to complete the old program in 2012. Those employees who completed the program in 2012 will not need to complete the new program until the next compliance period that will run from December 2014 through April 2015.

If a state, county or municipal agency establishes a compliance period for employees that falls outside the December through April compliance period, they are reminded that all public employees must complete the online training program and provide a certificate of completion within the period of ninety (90) days before, or ninety (90) days after, the two (2) year anniversary date of their last online training completion date. Such certificates of completion must be provided by state and county employees to their respective appointing authorities (or designees), and by municipal employees to their respective city and town clerks. New employees must complete such training within 30 days of the date on which they commence employment and once every two years thereafter. After completing the online training program for the first time, new employees should next complete the program along with all other agency or municipal employees, even if that compliance period occurs prior to the two year anniversary from their last online training completion date, so that agencies and municipalities have all employees comply within the same limited time frame without employees exceeding the two year statutory requirement before they next complete the online training program.

**b. Completing online training: Group sessions and multiple users of same computer**

Employees can complete the training on work time and on their work computers, or during non-work time on their home computers or on any other available computer, such as, for instance, at a public library. After completing the program, each employee should print out two copies of the completion certificate, one to keep and one for his or her employer.

Employers can organize group online training sessions, to be conducted by a knowledgeable person. Group sessions must use the online training program available from the Commission's website. A group training session must be set up so as to ensure that every employee knows the correct answer to every question by the end of the training. An employer organizing a group session may use a laptop computer and projector to present the online training from the Commission's website. Employers who organize group sessions will be able to provide completion certificates for each of the attendees.

The Ethics Commission will consider requests from public agencies and municipalities to share its online training application so that it can be posted on the agency or municipality's website for the convenience of public employees in completing the training and of the public employer in keeping records. The Commission requires public employers to whom this option is provided to agree to use the application only for training their own employees, not to provide the application to anyone else, and to exactly match the application as it appears on the Commission's website. A public employer seeking to do this should contact David Giannotti, the Commission's Chief of the Public Education and Communications Division, at the following e-mail address: [dgiannotti@eth.state.ma.us](mailto:dgiannotti@eth.state.ma.us).

Employers need not choose only one of these methods, but can combine methods as they find convenient to reach all employees. The Commission also invites employers to propose other

means of achieving compliance; if approved by the Commission, these alternative means will also satisfy the online training requirement.

### **c. Certificates of completion of the online training requirement**

Each employee who completes the online training should print out two copies of the certificate of completion showing that he or she has done so, keep one, and give the other to his or her employer, as follows:

- Appointed state and county employees shall file the certificate of completion with the employee's appointing authority, or his or her designee.
- Elected state and county employees shall file the certificate of completion with the Ethics Commission.
- Municipal employees shall file the certificate of completion with the city or town clerk.
- Employees of regional entities that include more than one municipality shall file proof of compliance with the regional entity.
- An employer may authorize its employees to save the certificate of completion electronically and email it to a designated employee for filing. Employers may maintain certificates of completion received electronically in electronic form.
- Employers may use any of the methods for compliance described above as they find convenient to reach all employees. Whatever method or methods the employer adopts, the certificates of completion must be maintained in such a manner so as to be readily accessible for review if requested by the Commission. In particular, state and county appointing authorities (or their designees), and city and town clerks, must maintain certificates of completion in a manner that would permit them to comply with requests by the Commission for production of the certificates of specific employees and notification of the names of employees who have not complied.

### **d. Record-keeping requirements**

State and county appointing authorities (or their designees), and city and town clerks, must maintain a list of all employees who are required to complete the online training program, and such list must indicate as to each listed employee whether the employee provided a certificate of completion. In addition to the list, the certificate of completion itself must be maintained as a record of the agency. Both the lists and the certificates of completion must be maintained for six years.

## **5. DESIGNATION OF MUNICIPAL LIAISONS**

The law requires municipalities to designate "a senior level employee of the municipality" as a liaison to the Commission. The Commission will disseminate information to the liaisons and will conduct educational seminars for them. Liaisons will also be required to be accessible to

public employees in their municipalities and to check the Commission's website regularly for updates. The Commission may call upon liaisons to provide information about their towns' compliance with these training and education requirements, and to assist in locating former public employees of their municipalities.

Municipal liaisons may contact the Commission's Legal Division for advice on behalf of fellow employees, but, before doing so, they must obtain the permission from the fellow employee to discuss his or her situation with the Legal Division.

Given the responsibilities that will be required of the liaisons, the Commission recommends (but does not require) that municipalities appoint a full-time administrative employee to the position of municipal liaison, or, if the municipality has no such full-time employee, then a part-time administrative employee, since such a person will need to be accessible to municipal employees and situated so as to be able to perform this role.

## **6. REGIONAL ENTITIES**

The requirements of the ethics reform law apply to all public employees, including employees of regional entities such as regional school districts and educational collaboratives, regional retirement systems, regional transit authorities, regional planning commissions, regional councils of governments, and independent entities such as water and sewer districts and fire districts and prudential committees.

When an independent entity such as a water and sewer district is contained entirely within a municipality, the city or town clerk is responsible for complying with the requirements concerning summaries and on-line training.

When a regional entity is composed of multiple municipalities, or spans the borders of multiple municipalities, then the regional entity is itself responsible for complying with the requirements concerning summaries and on-line training, and for designating a liaison to the Commission.

## **7. PUBLIC EMPLOYEES UNABLE TO COMPLY WITH EDUCATION AND TRAINING REQUIREMENTS**

Some public employees may be unable to comply with the mandatory education and training requirements concerning the conflict of interest law, because of lack of fluency in or ability to read English, special needs, or leaves of absence.

Public employees are exempt from complying with these requirements while on leaves of absence but should comply with these requirements within 30 days of their return from leave.

If a public employee is unable to comply with these requirements because of lack of fluency in or ability to read English, or because of any special needs, he or she may request that the employer take reasonable steps to convey the information contained in the summary and the online training to the employee, in a manner comprehensible to the employee. Employers should make such accommodations to the extent feasible. If an employer is not able to make such an accommodation, it may exempt the public employee from complying with the mandatory education and training requirements. Employers must maintain records of accommodations made and exemptions granted pursuant to this section.

## **8. EMPLOYERS' OBLIGATIONS**

The law requires public employers to distribute summaries of the law to their employees and to keep records of compliance with the new mandatory education and training requirements. The law places responsibility for acknowledging receipt of the summaries, and for completing the online training, on the public employees. However, employers must take reasonable steps to assist their employees in complying with these requirements, including, but not limited to, periodically reminding their employees of their need to comply, and providing and facilitating group online training sessions for those who need them. A public employer which has complied with the procedures set forth herein will be considered to have taken such reasonable steps. If an employee refuses to acknowledge receipt of a summary of the law or to comply with the online training requirement, then the employer may, but is not required to, take disciplinary action against the employee. Although the employer is not required to affirmatively report the employee to the Commission, the employer is required to provide such information if so requested by the Commission.

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