

# Department of General Services

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## Incompatible Activity Statement

# INCOMPATIBLE ACTIVITY STATEMENT

## **INTRODUCTION:**

**6100**

It is the policy of the Department of General Services (Department) to provide civil service employees and exempt officers with guidelines concerning activities which are incompatible with state employment. The purpose is to protect the outstanding record of personal integrity established by employees in carrying out the Department's responsibilities to other state agencies and the public.

Where "notification", "requests for rulings", or "advance approval" are required in the following policies, an employee is required to present the matter in writing to that person's immediate supervisor. The supervisor will forward the request through the chain of command to the Office Chief, who will decide the matter. If the Office Chief is involved in the matter, the request will be submitted to the appropriate Deputy Director for review/approval. If a Deputy Director or exempt employee is involved, the matter will be submitted to the Director for review/approval. A copy of any written response to an employee is to be forwarded to the Department's Labor Relations Officer.

## **DEFINITIONS:**

**6105**

"Employee" includes all civil service employees, "exempt" officials and employees, officers, casual laborers, students, and volunteers in the Department of General Services. The term encompasses any attempt by an employee to circumvent the following policies by the use of a friend, relative, dependent, outside employment, or other alter ego to accomplish indirectly what the following policies prohibit. This definition of "employee" applies throughout this statement.

"Person" includes individuals, firms, corporations, partnerships, associations, other governmental bodies, or agents and representatives of these entities. This definition of "person" applies throughout this statement.

## **GENERAL POLICIES:**

**6110**

This statement will be given to all current and future employees of the Department of General Services.

All levels of supervision are responsible for ensuring their subordinates are informed of these policies. All potential employees should be made aware that in accepting employment they consent to these policies.

These policies do not attempt to specify every activity which may be incompatible, nor should they be taken as the only rules which must be observed by an employee. The policies are not intended to change any existing law. The prohibited activities are examples; specific activities must directly relate to employees' jobs.

**PROHIBITED ACTIVITIES:**

**6115**

**Outside Employment:**

All employees are required to devote their full time, attention, and effort to their jobs during their State working hours. Before starting outside employment, employees who believe that such employment may conflict with their State job shall advise their supervisor in writing. General prohibitions on outside employment include:

- A. Accepting non-State money or other consideration for performing a duty which the employee or Department would be expected to perform in the course of state business
- B. Performance of an act in other than his or her capacity as a state employee knowing that such act may later be subject, directly or indirectly, to the control, inspection, review, audit or enforcement by the employee.
- C. The private practice of law or other outside employment by an employee who is a member of the State Bar which may require his/her appearance before any state agency, Board or Commission or any committee of the Legislature on behalf of his/her outside employment or client regarding a matter in which the Department is involved.
- D. Any employment outside state service for which the employee is selected or retained wholly or partially because of his/her position with the Department.
- E. Employment of an employee qualified to practice accounting in an outside public accounting practice which requires him/her to prepare a report or return which is subject to review by the Department. Exceptions which are permissible outside activities are:
  - 1. Teaching;
  - 2. Bookkeeping as distinguished from Public Accounting;
  - 3. Employment with a licensed Public Accountant or firm if the employer takes full responsibility for all work performed by the state employee or officer.
- F. Employment by a person doing construction or other work financed by state funds allocated to local government units by the Office in which the employee works.
- G. Standing for election or appointment to a local public office (including city and county offices, school boards or special districts) by an employee assigned to activities relating to the allocation of state funds to local government units or assigned to review or approve plans, specifications, or applications from local government units is prohibited without written approval that the particular

employment or standing for election is not incompatible with the employee's duties.

Approval for standing for election or for holding a nonpartisan local government office will take into consideration the following:

1. The local government office will not be full time and will not interfere with the employee's normal working hours or efficiency. The employee will disqualify himself/herself from debating, voting on, or in any way attempting to influence matters appearing before his/her local government office which affect the Department and its programs in the community.
2. The employee cannot be involved in departmental recommendations or decisions on matters which are also of direct concern to the local government office he/she holds or for which he/she is standing for election. If this occurs, the employee is to remove himself/herself temporarily from the process of forming recommendations or making decisions which affect the local government office. If such matters occur frequently in assigned duties, the employee may be rotated to a different position if possible.

**GIFTS AND HONORARIA:**

**6120**

- A. An employee shall avoid direct, indirect, implied or assumed obligations to show favoritism or more friendliness to one person than to others. No employee shall accept, solicit or pass on to other persons any gift, including money or any service, gratuity, favor, entertainment, hospitality, loan, or any other thing of value from anyone who is doing or seeking to do business of any kind with this Department or whose activities are regulated or controlled by this Department under circumstances from which it reasonably could be substantiated that the gift was intended as a reward for any official actions performed by the employee. The Department's policy on gifts is set forth in Administrative Order 05-06, which has been incorporated into the DGS Manual, Personal Conduct Policies, Refuse Most Gifts - Section 0212. See also Fair Political Practices Commission (FPPC) Regulations 18703.4, 18704.1, 18705.4, 18728, 18940 through 18946.5, and 18950.1, FPPC Regulations 18930-18933 for honoraria, and relevant FPPC Regulations as hereinafter promulgated and/or amended.
- B. All favors must be courteously refused.
- C. Perishable gifts directed to an individual shall be sent to a charitable organization and the donor so notified. Perishable gifts that were not directed to an individual shall be handled in accordance with the direction of the Deputy Director of the unit which receives the gifts. Deputy Directors shall have discretion to determine the disposition of such gifts.

- D. If the return of a gift would be difficult, unusually costly, cause embarrassment or extreme inconvenience, the employee's immediate supervisor must be notified immediately. The immediate supervisor shall decide the matter or raise the issue through the chain of command as appropriate. Gifts received by the department from foreign delegations shall require submission and approval of the appropriate form to accept gifts to the state to the Department of Finance (DF-581 – Request for Approval of Gift) in order to be accepted by the department. See <http://www.dof.ca.gov/fisa/bag/gifts.htm> .

In case of doubt as to the propriety of accepting a gift, the gift should be refused.

**MISUSE OF POSITION:**

**6125**

- A. Misuse of position includes using state time, facilities (including the Department's social media accounts), equipment or supplies for private gain or for the advantage of another person. Examples of misuse of position include:
1. Accepting, taking or converting to one's own use, products of any kind in the course of or as the result of inspections of products or facilities.
  2. Using state postage or stamping facilities even though the State is reimbursed before or after such use.
  3. Arranging for employment outside state service while on duty.
  4. Using status in the Department to solicit directly or indirectly business of any kind or to purchase goods or services for private use at discounts from a person who does business with the State.
  5. Using confidential or non-confidential information available to an employee for personal gain or advantage of another person solely because of the employee's state position. Supervisors should make reasonable efforts to ensure employees are aware what information is confidential.
  6. Providing confidential information to persons who have not been authorized to receive the information.
  7. Providing services or information to prospective bidders which is not available to all bidders to any contract.
  8. Providing or using the names of persons or records of the Department for a mailing list which has not been authorized.
  9. Preparing, presenting or publishing any speech, article or other writing relating to the operation of the Department for compensation from a source other than the State without prior approval of the Department.

10. Fee appraising or other private employment which used knowledge of information regarding state plans, intentions, or transactions to acquire property.
11. Speculation in real estate using knowledge of programs or projects of this Department. Such involvement, even for the sole benefit of other persons, shall be regarded as incompatible. When an employee has a real property holding which may be affected by the results of departmental decisions, the employee is to make it known in writing and withdraw from any involvement in forming recommendations or in making decisions relative to the project. In normal circumstances, an employee purchasing a single-family house or condominium unit for a primary residence is not considered to be involved in speculative real estate transactions; however, an employee is not knowingly to make a property acquisition for a purpose which is related to a real property transaction of the Department. When an employee is in doubt as to whether a particular real estate transaction conflicts with this policy, the employee should request a ruling.

An employee engaged in duties, including clerical duties, related directly to the appraisal or acquisition of property for other state agencies, is subject also to the prohibitions on real estate activities of those agencies. Supervisors will be responsible for obtaining copies of incompatible activity statements from other agencies when assigning employees their work and will see that each employee affected reviews a copy.

12. Engaging in private real estate activities as a broker, salesperson, appraiser, or investor when dealing with properties which are subject to, or might reasonably be considered as affected by, the real estate functions of the Department including, but not limited to, its budget estimating, appraisal, acquisition, review, approval, control, relocation, rental, leasing, or disposal functions.

Each employee who possesses an active real estate broker or sales license is required to maintain a record of each real estate transaction which involves the use of that license. These records shall be available to management upon request. The records must include:

- a) Date - either the date of recordation or the date of the contract.
- b) Property location - street address and city or other description sufficient to clearly identify the location of the property.
- c) Principals.
- d) Type of transactions - sale, trade, or lease.

13. Bidding to acquire any excess state properties or related improvements, equipment or furnishings from this Department.

Where solicitation for sealed bids is made by another department or state agency, or in open auctions, employees may bid if they have no connection with the inspection and survey process nor with bid solicitation or processing.

14. Using a badge, uniform, prestige or influence of a state officer or employment for private gain or for the advantage of another. Examples would be including the following situations:
  - a) An employee who, while serving as an officer, employee, member of the Board of Directors, or in any capacity in an organization which transacts or attempts to transact business with the State for profit, holds a state position of review or control over such business transactions.
  - b) An employee assigned the preparation, review, or approval of specifications for the purchase or lease of any property, equipment or supplies shall immediately give notification if the potential bidder is a firm, corporation, company, association, partnership or other entity in which the employee or a close relative has a beneficial interest.
  - c) Directly or indirectly entering into any agreement, partnership, profit-sharing or employment arrangement including consulting services with an architect or engineer to engage in the design of any building, the construction of which is subject to supervision by this Department.
  - d) Adopting, issuing, interpreting or applying a rule, directive, regulation, order, or standard of conduct with intent to obtain a private gain or advantage.

**FILING REQUIREMENT:**

**6130**

All employees must file an Incompatible Activity Statement Certification upon 1) initial appointment; 2) change in classification; and 3) change in duties or circumstances that raises the issue of potential conflict with this policy.

**APPEAL PROCEDURES:**

**6135**

The intent is to provide employees with a means to resolve possible conflicts with the Incompatible Activity Statement without producing ill will. A represented employee, i.e., a rank-and-file employee under the Ralph C. Dills Act (Government Code Section 3512 et seq.), may file a grievance or complaint concerning the applications of this policy in

accordance with the applicable Memorandum of Understanding. An excluded employee may file a complaint concerning the application of this policy.

An employee may ask that person's supervisor for a written order to perform a specific duty which the employee believes to be incompatible with his/her duties. Supervisors need not provide written orders where the orders given employees do not relate to an incompatible act. If a supervisor will not provide a written order, an employee may submit a written summary of the supervisor's order to his/her personnel file. Employees are expected to comply with verbal or written orders. If they believe the order is in violation of the Incompatible Activity policy, they have a right to pursue the issue through the grievance/complaint process.

**PENALTY FOR VIOLATION OF  
INCOMPATIBLE ACTIVITY STATEMENT: 6140**

An employee will be subject to disciplinary actions for a violation of any of the policies contained in the Incompatible Activity Statement. Pursuant to Government Code Sections 19572 and 19990, incompatible activities may constitute grounds for adverse action. The severity of any adverse action taken will depend on the adverse consequence to the State caused by such actions. Further, if such activities may be considered criminal behavior, DGS may report such behavior to the appropriate authorities to pursue criminal charges.

**CERTIFICATION: 6145**  
The following certification is to be signed and submitted by employees to the Office of Human Resources.

**AUTHORITY: 6150**  
California Government Code Sections 19572 and 19990, Public Contract Code Sections 10410 and 10411.

APPROVED:

ORIGINAL SIGNED

March 13, 2015

\_\_\_\_\_  
Esteban Almanza, Acting Director  
Department of General Services

\_\_\_\_\_  
Date

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**CERTIFICATION:**

The following certification is to be signed and submitted by officers and employees to comply with the Incompatible Activity Statement in accordance with the Department of General Services policy, Government Code Section 19990, and applicable Memoranda of Understanding.

**CERTIFICATION**

I have received and read a copy of the Incompatible Activity Statement of the Department of General Services.

Signature	Date
Typed or Printed Name	
Classification Title	Position Number
Office/Division	

Filing certification due to:

- Initial appointment
- Change in classification
- Change in duties or circumstances that raise the issue of potential conflict with this policy

After completion, detach this page and submit it to your Attendance Clerk for processing.

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