

the Ethical Times

Working 9 to 5 to 9 Chapter 68 and the Gig Economy

By Alex Kipp

There's nothing new about public servants wanting to earn a few extra bucks on the side. It certainly is an area of interest that precedes the 30-year-old conflicts of interest law. City employees have long engaged in side hustles like coaching sports, flipping houses, videotaping weddings, or selling batteries on the Q train. But the Internet has caused an explosion both in the ways we might promote those traditional side hustles and in identifying a vast number of new products and services that people will, however unbelievably, purchase. Like other out-



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side jobs, some gigs will require a waiver from COIB. Others won't. But, whether we need a waiver or not, we should keep in mind all of the other conflict of interest restrictions designed to prevent crossover between our public duties and private interests. Let's explore those now.

Do You Need to Disclose Your Outside Gig?

Many City agencies require their employees to disclose any and all outside employment, including owning a business or running an outside practice. Check with your agency to make sure, but, if you have to disclose any kind of outside job, it's a pretty safe bet you'll have to disclose your participation in the gig economy, as well.

Do You Need a Waiver to Gig?

As you might recall, full-time public servants who wish to have positions with any private entity that does any business with any City agency must seek and obtain written permission from their agency head and a waiver from COIB. But, as a gig worker, do you need a waiver sell your services on a gig-finding app?

Like all good legal answers, ours here begins with "it depends." In many gig situations, us-



ing the gig platform to find clients to sell your services or products does not mean you have a “position” with the platform. In other words, selling artisanal *Star Wars*-themed beer cozies on Etsy is not the same as working for Etsy as a software developer. (According to checkbooknyc.com, Etsy doesn’t have business dealings with the City, so you wouldn’t need a waiver even if you had a position with Etsy, by the way.) But, even though you don’t have a position with a platform, you may still need a waiver for the gig, albeit for different reasons.

Appearing Before City Agencies – Example: Ride-Hailing Apps

For a case in point, let’s look at a ride-hailing app like Uber. Does being an Uber driver mean you have a “position” with Uber? No. But the for-hire vehicle industry is heavily regulated by the City’s [Taxi & Limousine Commission](#). Uber drivers in the five boroughs have to represent themselves before the TLC on issues involving licensing, summonses, and the like. Full-time City employees aren’t allowed to represent private business interests (including their own) before any City agency, unless they get a waiver first. So, any full-time City employee wishing to be an Uber, Lyft, or Juno driver will need agency head permission and a waiver from COIB to do so.

Now, a lot of other kinds of gigging (selling *Game of Thrones*-inspired cake pops via Etsy, DJ’ing laundromats via Fiverr, or assembling furniture for obscenely rich & lazy people via TaskRabbit) are less regulated than for-hire vehicles. But there are a few other conflict of interest considerations to keep in mind.

Use of City Time and Resources for Your Outside Gig

Can’t happen. Not one minute of City time. Not one phone call on a City phone. Not one email sent on a City computer. This would include casually “stopping by” your TaskRabbit or Etsy portal to see if any requests or correspondence have newly arrived. It would also include using your City office to shoot a promotional video for your private online fashion/fitness business, as one former City employee found out. She paid a \$4,500 fine.

Getting into Financial Relationships with Superiors or Subordinates

Also can’t happen. You can’t be your boss’s personal style/tax consultant. Your boss can’t sell you custom sculptures of your extended family using reclaimed bowling balls. (Unless, of course, the sculpture costs less than \$25, which is [the limit set by the Board Rules](#) for permissible purchases of property between superiors and subordinates.) And your boss can’t pay you to wear a hot dog costume and dance around to a song of their choice.

Getting into Financial Relationships with People You Deal with in Your City Capacity

This is pretty much the same as above. If you deal with a vendor in your City capacity, you can’t sell that person a house and you also can’t, for a fee, cast “bullet proof” spells of protection on them. Also, remember that, unlike with superior-subordinate financial purchases and sales, when it comes to vendors or other members of the public you deal with in your City capacity, not even a one-time \$5 sale would be allowed. A City inspector not that long ago was fined \$1,750



when he tried to solicit sales for his coffee & tea business from a Section 8 recipient while he was inspecting the recipient's apartment.

Use of City Position

In whatever gig you choose to do on the side, remember that you gig solely in your private capacity, and never as a public servant. You can't use your City title, your position, your badge, or your City uniform (if you have one) in any part of your private business ventures. This would include identifying yourself as a City employee in order to get a special advantage for your gig. Recently a City employee who had a waiver to moonlight as an Uber driver did exactly that when he flashed his badge and threatened official retribution in a (failed) attempt to get special treatment from TLC. He was fined \$6,000.

Technology moves fast. Websites like Airbnb, Lyft, Youtube, and TaskRabbit have created many exciting ways to turn what we used to think of as "down time," "personal space," and "privacy" into "lucrative opportunities." But new opportunities to make New York living a little more affordable come with new ways to violate the conflicts of interest law, if we're not careful.

In this time of great evolution and greater monetization, it's nice to know at least one thing remains free and unchanged: the way COIB gives confidential legal advice about complying with the conflicts of interest law.

Call us at 212-442-1400 from 9:00 to 5:00, Monday through Friday or go to our website: nyc.gov/ethics.



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Recent Enforcement Cases

Misuse of Position & City Resources. A now-former NYC Department of Correction (DOC) Warden used her assigned DOC "take-home" vehicle for 12 personal trips unrelated to her commute. On one occasion, she also had a subordinate on-duty Correction Officer chauffeur her daughter using this vehicle on a three-and-one-half hour trip to a hair salon. The former Warden paid a \$1,500 fine to the Board.

In setting the fine, the Board took into account that the Warden had already forfeited 20 days of compensatory time, valued at \$13,656.40, to DOC and reimbursed DOC \$154.87 for the mileage during her instances of personal travel.

Misuse of City Resources. On eight occasions, a Health Services Manager at the NYC Department of Health and Mental Health (DOHMH) used a DOHMH Zipcar account to rent Zipcars for her personal use. On two of these unauthorized trips she incurred tolls that were charged to the City. In a joint settlement with DOHMH and the Board, the Health Services Manager paid a \$2,500 fine, \$1,500 to the Board and \$1,000 to DOHMH.

Expert Witness. A Director of Service for the Ophthalmology Department at NYC Health + Hospitals (H+H) Kings County Hospital earned \$14,750 by appearing as a paid expert witness in a medical malpractice case brought against H+H. In his role as the plaintiff's expert witness, the Director provided an affirmation submitted to the court and testified against H+H. In addition to paying a \$2,500 fine, the Director paid the Board the \$14,750 he earned by violating the conflicts of interest law.

Recent Enforcement Cases

Prohibited Interest, Misuse of Position, Prohibited Appearances. A NYC Department of Education (DOE) teacher also has a private business that provides DJ services for events. From 2014 through 2016, the teacher provided DJ services for ten events at his school, receiving a total of \$4,175 for his services. He arranged the DJ services with the school's parent coordinator and submitted invoices to the school; school staff personally gave him a check for each event. In a joint settlement with the Board and DOE, the teacher paid a \$2,500 fine to the Board.

Conflict with Official Duties. The Board issued a public warning letter as a reminder to all teachers not to enter into financial relationships with students – and a reminder to all public servants not to enter into a financial relationship with any person served by that public servant's City agency. In this case, during the 2016-2017 school year, a DOE teacher ran a project with two students at her school to repair cracked cellphone screens; the teacher accepted money from students and faculty for the parts and labor to perform those repairs. On one occasion, she removed two students from their regular algebra class to do repair work.

In issuing a public warning letter instead of seeking a fine, the Board took into consideration that there was no evidence that the teacher profited personally from the cellphone repair project.

Acceptance of Gratuities. As part of his official duties, a now-former Senior Mortuary Technician for H+H helped transfer bodies from the hospital morgue to the vehicles of funeral directors. The Senior Mortuary Tech-

nician had been instructed not to accept tips for performing this work. Despite those instructions, on multiple occasions, the Senior Mortuary Technician accepted tips from funeral directors for performing this work. The Senior Mortuary Technician paid a \$900 fine to the Board.

A [searchable index](#) of all the COIB Enforcement Dispositions and Advisory Opinions is available courtesy of New York Law School.

Congratulations!

To the winner of our Public Service Puzzler, **Ausama Abdelhadi** of NYPD Trials.



This month, we have a [logic puzzle](#) for enforcement fans!

Piece together the case files, then send us your answers by July 19th.

Schedule a Chapter 68 Class

COIB's Education & Engagement Unit can arrange a class in Chapter 68 for you and your staff

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