

the Ethical Times

The Employee Formerly Known as Public Servant

By Rob Casimir

“What if I violate the conflicts of interest law but then retire or resign and take another job? Can I still get in trouble?”

Whenever someone asks me this during a training (which is fairly often!), I get the sense they think they’re Nicholas Cage, flipping over the Declaration of Independence and finding a hidden loophole in the law. Perhaps they imagine themselves taking numerous prohibited gifts from vendors and making for the county line and sweet, sweet freedom (naturally, I am played by a more attractive Sean Bean). Outrun COIB, outrun the consequences!

Unfortunately for such cinematic imaginings, the law not only empowers the Board to pursue violators even after they have left their City positions, it actually has provisions that apply *specifically* to former public servants.



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The first is the “revolving door restriction.” For one year after leaving City service, former public servants may not communicate with their former City agency on behalf of their new private employer or business. There are a number of public interest concerns driving this prohibition, but, [in the words of our General Counsel](#), “the main one is probably that we don’t want city employees to trade on their city jobs for private gain, and this can occur even after [they’ve] left City service.” In the same way that the law prohibits *current* public servants from using their public position for private gain, the law also seeks to ensure that recently-separated City employees are not trading on their prior public position in their work for a new employer.

Some high-level former public servants face an even stricter revolving door rule. Elected officials, deputy mayors, the chair of the City Planning Commission, and the heads of the Office of Management and Budget, Law Department, and Departments of Citywide Administrative Services, Finance, and Investigation, for one year after they leave City service, may not communicate with their former *branch* of City government on behalf of their new private employer or business.

These restrictions apply only to *compensated* communications, like bidding on a contract, attending an inspection at a construction

site, or submitting a letter on behalf of a client. Visiting your old coworkers for an office social event — a retirement party, for example — is completely fine.

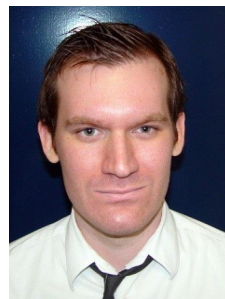
Building from there, all former public servants are bound by a “particular matter bar.” After leaving City employment, former public servants may *never* work on the same particular matter on which they personally and substantially worked for the City. This means that if you are negotiating a contract in your official capacity as a City employee, and you leave for a new job in the private sector, you can never work on that same contract for your new employer. The rationale here is similar: while the Parks employee who participates in the selection of a big construction company might end up working for that company in the future, it would be uniquely problematic if he could work on the very project he was involved in on behalf of the taxpayers.

Finally, public servants may not disclose confidential City information or use it for any non-City purpose, even after they leave City service. Similar to how a doctor cannot simply retire and violate HIPAA, former public servants maintain an obligation to protect City information beyond the term of their employment. Protecting citizens’ private information is a crucial element to building and maintaining trust in government, and failure to do so makes every City employee’s job more difficult.

There are exceptions to these provisions. First, if you leave your City position for another government job — a municipal, state, or federal position — then you are still working on behalf of the public, so the revolving door restriction and particular matter bar don’t apply. You could, for instance, leave DOE to work for the State Education Department and liaise with DOE on Day One; you could negotiate a contract while at DDC that involves the School Construction Authority and then work on that same contract at SCA.

The Board occasionally issues waivers allowing former public servants to engage in otherwise-prohibited post-employment conduct. Similar to a moonlighting waiver, which all City employees must obtain to work a job with any firm that they know or should know does business with the City, a post-employment waiver would allow a former public servant to make compensated communications and/or work on a particular matter on behalf of a private entity, provided that [a specific set of criteria are met](#). Additionally, a “consulting back” provision in the Board’s post-employment rule allows former public servants with highly specialized skills to work as consultants for their former City agencies within their first post-employment year, again, provided that [certain criteria are met](#).

If you’re thinking about leaving your City job and becoming a former public servant yourself, I highly recommend giving our [Attorney of the Day Helpline](#) a call. From Monday through Friday, 9am - 5pm, the Board provides confidential advice to all current *and former* public servants. Our attorneys will help you spot any issues that may arise in your post-City job and can advise you on how best to comply with the obligations of Chapter 68. Looking to do some self-study? [Check out the Board’s website](#) to learn more about the conflicts of interest law. And, as always, keep reading the Ethical Times.



Until next month, current public servants!

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Recent Enforcement Cases

Misuse of City Resources. The Deputy Commissioner of the NYC Department of Correction (DOC) Investigation Division used his assigned DOC take-home vehicle to make 18 personal trips, including to various locations in Westchester County, to New York City airports, to City Island, and to Greenwich, Connecticut. DOC take-home vehicles are assigned to DOC employees to be used only in the performance of their official duties and to commute. After a full hearing before an Administrative Law Judge at the NYC Office of Administrative Trials and Hearings (OATH), the Board issued an Order imposing a \$15,500 fine—the amount recommended by the OATH Administrative Law Judge—on the now-former Deputy Commissioner.

Prohibited Post-Employment Appearances. A former Executive Director of Field Operations in the Division of Early Childhood Education at the NYC Department of Education (DOE) began working at the Center for Supportive Schools (CSS), which had a contract to provide services to DOE. Within the first few months of leaving DOE, the former Executive Director signed 12 subcontracts on behalf of CSS that were submitted to DOE; participated in bi-weekly telephone calls with DOE employees about the CSS contract; and sent 35 emails to and remained copied on email exchanges with DOE employees about the CSS contract. The former Executive Director paid a \$2,000 fine to the Board, which took into account that she immediately stopped communicating with DOE on behalf of CSS and promptly self-reported her conduct to the Board when she was made aware of her violations.

Misuse of City Position & Misuse of City Personnel. The Deputy Commissioner of DOC's Health Affairs Unit had her subordinate Executive Assistant provide childcare for her children:

- On four occasions, the Executive Assistant babysat the children, including for one weekend at the Deputy Commissioner's house and three periods of several hours at the Executive Assistant's house;
- On five or six occasions, during her DOC work hours, the Executive Assistant drove the children from DOC headquarters to school and daycare in Flushing, Queens;
- On one occasion, during her DOC work hours, the Executive Assistant picked up the children from school and daycare while the Deputy Commissioner was out of the country.

The Board accepted the agency-imposed penalty of termination as a sufficient penalty to address these violations and imposed no additional penalty.

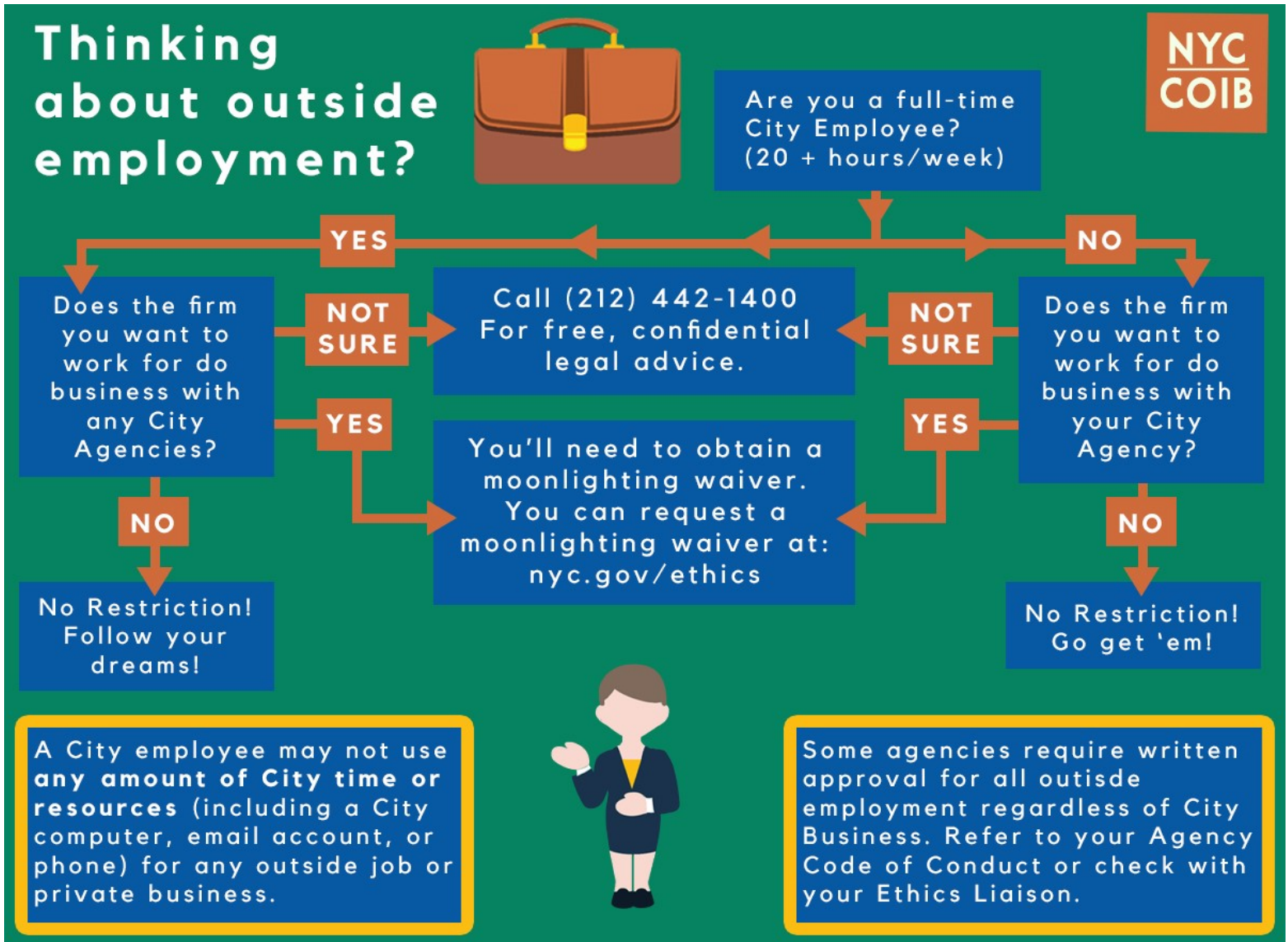
Misuse of City Resources & Misuse of City Time. A Technical Inspector at the NYC School Construction Authority (SCA) also operated a private electrical installation company. Over the course of 20 months, the Technical Inspector used his SCA smartphone and SCA computer to take and store approximately 474 photographs of equipment, projects, and documents related to his private electrical business; he uploaded and/or modified 55 of those photographs during his SCA work hours. On one occasion, the Technical Inspector used his SCA computer during his SCA work hours to upload and/or modify an electrical analysis document for his private business. SCA terminated the Technical Inspector for this conduct. The Board accepted the agency-imposed penalty of termination as sufficient to address these violations and imposed no additional penalty.

Recent Enforcement Cases

Misuse of City Resources, Misuse of City Time, & Misuse of City Position. A Manager of the Central Sterile Supply Department at NYC Health + Hospitals/Kings County (KCHC) also operated a private business that prepared clients for the New York State Central Service Technician (CST) exam and worked as an adjunct professor at LaGuardia Community College. Over the course of almost two years, the Manager used his City email account to exchange 21 emails related to his private business and 166 emails related to his work at LaGuardia, which he regularly sent and received during his City work hours. Additionally, the Manager awarded a KCHC CST internship to one client of his private business and attempted

to award such internships to three other clients. The Board accepted the agency-imposed penalty of termination as sufficient to address these violations and imposed no additional penalty.

Misuse of City Resource & Misuse of City Time. A City Pest Control Aide at the NYC Department of Health and Mental Hygiene (DOHMH) used her assigned DOHMH vehicle to make between 30 and 50 food deliveries for DoorDash, often during her DOHMH work hours. In a joint disposition with the Board and DOHMH, the City Pest Control Aide agreed to serve a 20-workday suspension, valued at \$2,866.



Recent Enforcement Cases

Prohibited Post-Employment Appearances.

A former Associate Commissioner for Infrastructure at the NYC Department of Information Technology and Telecommunications (DoITT) began working for a consultancy firm that connects technological service providers with potential clients. Within one year of leaving City service, the former Associate Commissioner communicated with DoITT employees on eight occasions concerning clients of his private employer, including attempting to persuade DoITT to purchase a product from one client. The former Associate Commissioner paid a \$5,000 fine to the Board.

Misuse of City Position.

A Health Services Manager in the DOHMH's School Health Vision Unit served on the panel that interviewed her sister's husband for a position in her unit. Her sister's husband was hired by DOHMH, and the Health Services Manager indirectly supervised him for two years; she had the authority to affect his work duties, assign his work location, and approve his timesheets. In a joint disposition with the Board and DOHMH, the Health Services Manager agreed to retire and to pay a \$750 fine to the Board.

Misuse of City Time.

On two occasions when she was required to be supervising the Gifted & Talented program at P.S. 7 in the Bronx, a DOE Principal taught a one-hour aerobics class at a New York Sports Club in Scarsdale, New York. In a joint settlement with the Board and DOE, the Principal paid a \$1,350 fine to the Board. In setting the fine, the Board took into account that DOE recouped from the Principal the \$667.84 that she was paid for the days on which she taught aerobics and was absent from P.S. 7.

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



New Video: Miss Use of Position



Hijinks ensue at the auditions for the First Annual Miss Use of Position Pageant.

(Note: this video was filmed before the Covid-19 pandemic.)

THE PUBLIC SERVICE PUZZLER

This month, inspired by St. Patrick's Day, we're looking for nominations for [a Patron "Saint" of Ethics](#). What historical figure best embodies the principles of Chapter 68?



[Submit your nominations](#) by 5:00 on Friday, April 16th.