

## Getting Inc.'d



**By Alex Kipp**

The New Year brings exciting opportunities. Self-reflection. Inspiration. Perhaps building in a few moments each day to quietly practice gratitude. Or it could be the year you, public servant, get a new tattoo. In a world where we've sold our preferences, our privacy, and many cute moments with our children in exchange for free access to the opinions of strangers and people we're sorry to know, we all yearn for ways to express our authenticity. Getting inked might be such a way. It's popular. It's cool. But what tattoo should you get? If you're a public servant, there are a few things to avoid so that you can stay in compliance with the Conflicts of Interest Law. Let's take a look.

First, let's talk about choosing your new tattoo. What should you get?

In the old days it might've been a band you really liked. I think that can be risky: what's hot in one moment might be Family Guy fodder a mere 10 years later. I know at least one person who got an Eddie Vedder tattoo in 1994. Most of you dear readers are either laughing at that right now or asking, "who's Eddie Vedder?" -- which proves my point either way.

Besides, bands are so passé. How 'bout brands? Maybe there's a product that really speaks to you. Something that captures the limitless possibilities of the future with staying power. Something like Juicero, Theranos, FTX, or maybe Tesla's Cybertruck? Sure, that would be cool. But you know what would be cooler? Earning some passive income for all that product placement you're doing on your natural assets, especially in a city where the hope of home ownership sounds about as fleeting as my hope of ever seeing another good Star Wars sequel.

This is where you, public servant, need to keep the Conflicts of Interest Law in mind. If you have an agreement with a company to walk around shilling their brand logos on your person, you may well have a position with that company. And if that company does business with any part of the City, you may have a violation that can only be cured by getting a waiver from the Conflicts of Interest Board. (You can request a waiver on our website here: <https://www.nyc.gov/site/coib/contact/get-a-waiver.page>.)

Now, if the Board does grant you a waiver for this otherwise impermissible position, you

will be reminded of a few very important guardrails to observe:

- You may not take any action as a public servant on any matter that your outside employer has before the City.
- You may not make compensated appearances on behalf of your outside employer before any City agencies.
- You may not conduct any outside employment activity on City time or with City resources. This includes altering your tat, making an appointment to alter your tat, or making calls on behalf of your outside employer with City or City-issued phones, computers, etc. – tat-related or otherwise.

Let's change that example a little bit. What if a company offered to give you a free tattoo of their branded logo? That's starting to sound like a gift. And if it's a gift, we must ask two very important questions. First, does the company do business with the City? If no, you're fine. You may accept the tattoo. If yes, then we must ask, "is the tattoo worth \$50 or more?" If yes, we have a potential problem and you're going to need legal advice, as public servants can't accept a gift of \$50 or more from any private entity doing business with any part of City government. The scrutiny will go up the closer the company is to anything you handle in your City capacity. So, for example, if I'm the person that handles my agency's contract with Xerox, accepting a free Xerox tattoo from Xerox would be problematic.

Now, I know what you're asking: is there any way for me to accept free tattoos from companies that do business with the City and not violate the Valuable Gifts Rule? At first glance the answer would seem easy: each tattoo you accept must be valued at less than \$50 (so they either have to be very small or very bad, or both.) However, you need to be a little careful about the brands you choose, as the Valuable Gifts Rule is aggregate and cumulative. If, for example, you got a \$25 Miller Lite tat on your kneecap, but also got a \$27 Milwaukee's Best tat on the bridge of your nose, that would put you over the limit as they're owned by the

same company. Or say you got a sweet little \$30 Charmin logo on your ankle and a \$30 Metamucil tat in the small of your back, those would add up, too, as they're both owned by the same company.

Let's shift to discuss the placement of your branded tattoo. In general, the Conflicts of Interest Law is meant to promote trust in government by making sure that government decisions are unimpeded by the outside interests of government decision-makers. Overloading a government conversation with advertising for your favorite products could muddy the integrity of that conversation and could even lead to a violation.

Take the example where the brand-owner of your tat is your outside employer. As their employee, you're associated with the company. In this case, you can't take any action as a public servant to promote this company. If, for example, my job was to meet with members of the public on their tax problems and I was being paid by Starbucks to advertise their company with their brand tattooed to my eyelids, not only could I not recommend Starbucks coffee to those members of the public I deal with, I couldn't even have my tattoo on display while I met with them. (So, either don't blink during the interview, or wear sunglasses, I guess.)

Whatever the new year brings you, I hope it involves peace and prosperity. And if part of that prosperity involves outside employment, gifts, or any other private interests, remember that the Conflicts of Interest Board is here to give you confidential legal advice every weekday from 9am-5pm. You can reach us at 212-442-1400 to get the conversation started or visit the Board's website: [www.nyc.gov/ethics](http://www.nyc.gov/ethics). But please remember: we are only empowered to advise about complying with the Conflicts of Interest Law. For larger questions like, "is a tattoo right for me," or "which tattoo is right for me," you will have to consult other authorities.



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## Recent Enforcement Cases

**Misuse of City Position.** A Principal for the New York City Department of Education (“DOE”) applied for her twin children to be enrolled in her school’s 3K program for the 2019-2020 school year. Of the 120 applicants for the school’s 3K program, DOE’s Office of School Enrollment (“OSE”) ranked the Principal’s children as the 44th and 69th most qualified. Notwithstanding these rankings, the Principal enrolled her children in two of the 15 available seats in her school’s 3K program for the 2019-2020 school year, thereby denying this free City educational program to two children who had been offered admission. The Principal agreed to pay a \$15,000 fine.

**Misuse of City Time & City Resources.**

On numerous occasions over a three-year period, the Director of the Air and Noise Unit for the New York City Department of Environmental Protection (“DEP”), assigned to work in Queens, clocked in at DEP while he was performing work for his outside job, commuting to that outside job in the Bronx, and at his home in Suffolk County. The Director also used his DEP email account to receive and reply to three emails related to his outside job and used his assigned DEP vehicle to drive to his outside job on one occasion. The now-former Director agreed to pay a \$9,000 fine.

**Misuse of City Position; Misuse of City Time & City Resources; Prohibited Job Seeking.**

The Deputy Executive Director for Planning and Program Development at Health + Hospitals/Harlem committed multiple violations of the Conflicts of Inter-

est Law related to her association with the for-profit firm Bridge Philanthropic Consulting (“BPC”), where she was an unpaid Executive Consultant. The Deputy Executive Director used City time and City resources to perform work for BPC, including sending and receiving over one thousand BPC-related emails using her City email account and storing multiple BPC documents on her City computer. She misused her City position by arranging for Harlem Hospital to schedule COVID-19 vaccination appointments for a BPC executive and three of his family members at a time when the COVID-19 vaccine was difficult to obtain in New York City. For more than a year while she held an outside position at BPC, she worked in her Health + Hospitals capacity on BPC efforts to raise funds to benefit Harlem Hospital, further using her City position to benefit BPC. Finally, while still working on BPC matters for Health + Hospitals, she was offered and accepted the paid position of BPC’s Chief Operating Officer. The now-former Deputy Executive Director agreed to pay a \$40,000 fine.

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