



West Virginia Department of Transportation Policy: **Secondary Employment or Certain Volunteer Activity**

Issued by the Secretary of Transportation

Policy No: DOT 3.28

Issue Date: 10/01/2003

Revised: 02/02/2022

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1.0 PURPOSE

The purpose of this policy is to standardize and simplify procedures for processing employees' requests for determinations as to whether secondary employment or certain volunteer activities may conflict with their primary employment with the Department of Transportation.

The information and procedures in this policy should not be construed to supersede any State or federal law or regulation. In the event of any inconsistencies between the policy and such law or regulation, the statutory or regulatory provisions shall prevail.

2.0 SCOPE

This policy is applicable to all Department of Transportation employees, of all classifications excluding the Parkways Authority.

3.0 DEFINITIONS

- 3.1 **Agency:** Any authority, bureau, commission, or Division, or similar cabinet subpart of the Department of Transportation
- 3.2 **Agency Head:** Chief executive officer of any agency
- 3.3 **Employee:** A person who lawfully occupies a position in a DOT agency and who is paid a wage or salary and who has not severed the employee-employer relationship

4.0 POLICY

- 4.1 Public service with the Department of Transportation (DOT) shall be the primary employment of every employee. Any secondary employment or volunteer activity must not: interfere with, conflict with, or have the appearance of a conflict with an employee's primary DOT employment; conflict with the interests of the DOT agency; interfere with the performance of the employee's official duties; use proprietary DOT information; create the appearance of official DOT action; or entail appearing before the DOT agency for which the individual is employed on behalf of the secondary employer or volunteer organization in any capacity.

Exception: While on military leave, the military service is the employee's primary employment. Certain prohibitions, which are listed below apply to all employees covered by this policy.

4.2 Standards

The Agency Head shall consider the following factors as to whether a review of the secondary employment/volunteer activity by the West Virginia Ethics Commission is required.

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- A. An Ethics Opinion is required if the Agency Head has reason to believe that:
 - 1. The secondary employment or volunteer activity is with a person or business over which the employee directly, or through subordinates, exercises regulatory authority in the individual's official capacity as a DOT employee.
 - 2. The employee will receive private pay for providing information or services that the public position requires the individual to provide to the public at no cost.
 - 3. The employee could access or use confidential agency information for the benefit of the secondary employer or organization for which the individual wishes to volunteer.
 - 4. The employee might use State time, supplies, or equipment to perform work for the secondary employer or organization for which the individual wishes to volunteer.

- B. In instances where an employee desires to perform part-time services for a second State entity, the West Virginia Ethics Commission has determined an Ethics Opinion is not required. The Agency Head, however, must still evaluate the request to ensure that while working for the primary employer, the employee does not perform work for the secondary employer in violation of the DOT's Employment Procedures. The employee must designate which job is primary if the individual desires to work two part-time or two full-time State jobs. The employee must request and receive advance approval for annual leave if the employee will be working for the second employer during their regularly scheduled workday.

- C. The decision of the Human Resources Division is required if the Agency Head has reason to believe that:
 - 1. The secondary employment or volunteer activity may be in conflict with the mission or goals of the agency.
 - 2. The secondary employment or volunteer activity may interfere with the performance of the employee's official duties.
 - 3. The employee will use, or appear to use, information obtained in connection with their official duties which is not generally available to the public.
 - 4. The secondary employment or volunteer activity may reasonably be regarded as official State action.

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4.3 **General Prohibitions for All Employees**

- A. No DOT employee may:
1. Provide any information or services to private individuals, companies, or affiliated governmental agencies or units related to the duties and responsibilities of their primary DOT position for personal gain.
 2. Use DOT work time to perform work for the secondary employer or volunteer organization.
 3. Use DOT supplies or equipment to perform work for the secondary employer or volunteer organization.
 4. Allow the duties of the secondary employment or volunteer activity to interfere with the assigned duties and responsibilities of the primary DOT employment.

4.4 **Required Actions**

- A. If applicable, employees must respond to any on-call demands of the primary DOT employment, as directed by their supervisors during periods of secondary employment or volunteer activity.
- B. Employees shall simultaneously inform their immediate supervisor at DOT and the secondary employer or volunteer organization, if, at any time, there becomes a conflict between the two positions.
- C. Employees shall not use the primary DOT employment to motivate or provide preferential treatment to any particular person involved with the secondary employment or volunteer activity because of services being rendered to their family members by the employees' primary DOT employer.
- D. Employees shall terminate the secondary employment or volunteer activity at any time the employing DOT agency determines that the work performance at the primary DOT employment has become unsatisfactory or conflicts with the interests of DOT.

5.0 **PROCEDURES**

- 5.1 Agency Heads shall notify all of their employees of the provisions of Section 15.1 of the DOT's Employment Procedures, and provide them with copies of this policy, or a means to access it, so that employees may submit timely requests for a determination regarding secondary employment or volunteer activities prior to engaging in such employment or activities. Upon receipt of an employee's request for a determination regarding secondary employment or certain volunteer activity, the employee's immediate supervisor shall advise the employee that, pursuant to

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Employment Procedures, the Agency Head must make a determination as to the potential for conflict between the employee's primary DOT employment and the employee's proposed secondary employment or volunteer activity.

- A. DOT employees must obtain a determination from the DOT agency that there is no conflict with the primary DOT employment by completing the Request for a Determination Regarding Secondary Employment or Certain Volunteer Activity form prior to engaging in any secondary employment or volunteer activity.
 1. An employee shall notify the employer of choice to begin secondary employment or voluntary activity by completing Part 1 and submitting the Request for Determination Regarding Secondary Employment or Certain Volunteer Activity form to the employee's Immediate Supervisor.
 2. The employee must complete a separate form to request approval for another review and determination regarding any conflict as a result of any change of duties in the employee's current primary DOT employment or with the employee's secondary employment or volunteer activity, or for each new position.
- B. After the request has been routed through the appropriate agency channels, the Agency Head, or designee, shall review the request and take the appropriate action, as outlined below.
 1. Notify the employee of a potential conflict with the employee's primary DOT employment and that the request requires further review as provided in Section 4.2 of this policy.
 2. Determine there is no conflict with the primary DOT employment. Complete Part 3 of the form and forward it to the appropriate primary employing DOT agency office.
 3. Determine there is no conflict with the primary DOT employment, but that certain limitations or restrictions are necessary. The limitations shall be noted on Part 3, Step 3, of the form and forwarded to the appropriate primary employing DOT office.
 4. Determine there is a conflict with the primary DOT employment.
 - a. Complete Part 3 of the form and provide a justification for the determination. This justification may be based on a determination by the West Virginia Ethics Commission that the secondary employment or volunteer activity would be inappropriate or unacceptable.
 - b. Notify the employee that they must not commence, or must not continue, the secondary employment or voluntary activity.

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- c. Specify the deadline for termination of the secondary employment (based on the degree of conflict) or volunteer activity.
- d. If the employee chooses to commence or continue the secondary employment or voluntary activity after being informed that the request was denied, the employer shall notify the employee that the individual's actions are deemed insubordination and that if the employee does not comply with the Agency Head's lawful directive, disciplinary action, up to and including dismissal, will follow. The employee may choose to resign from DOT employment.
- e. Forward the form to the appropriate primary employing DOT office for processing.

6.0 ENFORCEMENT & AUTHORITY

- 6.1 An Agency Head may modify the Request for Determination Regarding Secondary Employment or Certain Volunteer Activity form to include appropriate internal review and approval levels, but must retain the specified content and criteria, as defined in the West Virginia Governmental Ethics Act and the West Virginia DOT's Employment Procedures.
- 6.2 The Agency Head, or designee, shall complete Part 3 of the form and forward it to the appropriate primary employing agency office.
- 6.3 The Agency Head, or designee, shall notify the employee and the Division of Human Resources of the final disposition of the request.

7.0 REFERENCES

- 7.1 West Virginia Department of Transportation *Employment Procedures W. Va. Code of State Rules §217-1-15, Employment Conflicts*
- 7.2 *W. Va. Code §6B-1-1, et seq, West Virginia Governmental Ethics Act.*

8.0 CHANGE LOG

February 2, 2022 –

- Converted policy to DOT, last revised under DOP on May 1, 2007.

INSTRUCTIONS FOR COMPLETION OF REQUEST FOR DETERMINATION REGARDING SECONDARY EMPLOYMENT OR CERTAIN VOLUNTEER ACTIVITY

A written determination of no conflict from the primary employing agency's Agency Head must be obtained prior to the commencement of secondary employment or certain volunteer activity.

This request is for a determination regarding whether the secondary employment or volunteer activity described interferes or conflicts with, or has the appearance of a conflict with, the duties and responsibilities of your primary DOT employment.

THE FOLLOWING PROHIBITIONS APPLY TO ALL STATE EMPLOYEES ENGAGED IN SECONDARY EMPLOYMENT OR CERTAIN VOLUNTEER ACTIVITY

1. Employees shall not provide any information or services to private individuals, companies, or affiliated governmental agencies or units related to the duties and responsibilities of their primary DOT position for personal gain.
2. Employees shall not use DOT work time to perform work for the secondary employer or volunteer organization.
3. Employees shall not use DOT supplies or equipment to perform work for the secondary employer or volunteer organization.
4. Employees shall not allow the duties of the secondary employment or volunteer activity to interfere with the assigned duties and responsibilities of the primary DOT employment.
5. If applicable, employees must respond to any on-call demands of the primary DOT employment, as directed by their supervisors during periods of secondary employment or volunteer activity.
6. Employees shall simultaneously inform the primary DOT employment immediate supervisor and the secondary employer or volunteer organization, if, at any time, there becomes a conflict between the two positions.
7. Employees shall not use the primary DOT employment to motivate or provide preferential treatment to any particular person involved with the secondary employment or volunteer activity because of services being rendered to their family members by the employees' primary DOT employer.
8. Employees shall terminate the secondary employment or volunteer activity at any time the employing DOT agency determines that the work performance at the primary DOT employment has become unsatisfactory or conflicts with the interests of the DOT.

TO THE EMPLOYEE:

1. Be sure to print all information on the form.
2. A separate request must be completed for each proposed secondary employment or volunteer activity.
3. If there is a change of duties in the secondary employment or volunteer activity, you must submit a new request for a determination as to whether the revised duties would conflict with your primary DOT employment.
4. In the description section of Part I, you must note if the secondary employment is dual employment with the State or whether the volunteer activity is for a State agency.
5. You must fully complete Part I and forward the request form to the appropriate primary employing DOT agency representative.

TO THE EMPLOYER:

1. After evaluating the request, the immediate supervisor will complete Part II and forward the form to the Agency Head, or designee, for completion of Part III and final determination.
2. The appropriate primary DOT employing agency office shall notify the employee and appropriate agency staff (Part IV) of the agency's final determination by forwarding a copy of the completed request form.
3. The original completed form shall be retained in the employee's agency personnel file, with a copy forwarded to the Human Resources Division.

PART III- TO BE COMPLETED BY AGENCY HEAD, OR DESIGNEE (PLEASE PRINT):

Step 1: WV Ethics Commission Review is Warranted – check all that apply:

- Employee will be advised that the employee must obtain a West Virginia Ethics Commission opinion, due to potential conflict with the Ethics Act as noted below:
 - Use of public office for private gain.
 - Association may result in prohibited interest in profits or benefits of DOT contracts.
 - May use confidential DOT information obtained in course of official duties.
 - May conflict with the agency's rate-making, application, or regulatory functions.
 - Constitutes employment by an entity regulated by the DOT agency.
 - Other: (Explain)
- Employee shall be advised that the employee must resubmit the original request to the employer representative with Ethics Opinion attached.

Step 2: Human Resources Division Review is Warranted – check all that apply:

- Agency Head, or designee, must submit the original request and supporting documentation, including any Ethics Opinions, to the Human Resources Division for review and determination due to a potential employment conflict, as noted below:
 - Apparent conflict with the interests and mission of the DOT agency.
 - Potential interference with the performance of the employee's official DOT duties.
 - May use or appear to use proprietary information obtained through official DOT duties.
 - Secondary employment or volunteer activity may reasonably be regarded as official DOT action.
 - Other: (Explain)
- Human Resources Division Decision Received on _____(Attached)

Step 3: Final Decision

- No Conflict
- Conflict (*provide detailed explanation below*)
- Conflict (*but secondary employment or volunteer activity will be permitted with the detailed limitations or restrictions stated below*)

Agency Head's (or designee) Signature:

Date:

PART IV- TO BE COMPLETED BY APPROPRIATE PRIMARY EMPLOYING AGENCY OFFICIAL:

Mandatory Notifications by Agency

Date Notifications Made: _____

Employee

Immediate Supervisor

Human Resources Division