

## Summary of the Post-Employment Restrictions

### **TITLE 18 UNITED STATES CODE SECTION 207**

*None of the provisions of Title 18 U.S.C. 207 bar any federal employee, regardless of rank or position, from accepting employment with any private or public sector employer. Former federal employees are subject to a minimum of three or a maximum of six post employment prohibitions contained in this section of the United States Code.*

Your rate of pay or your pay schedule at the time you leave federal service determines exactly which of the six prohibitions will apply to you. If you are being paid at an annual rate which is less than the rate established for Level 5 of the Senior Executive Service (ES-5) you will be subject to three prohibitions – 18 U.S.C. 207 (a)(1), (a)(2), and (b). These three post employment prohibitions are explained on the following pages.

- **RESTRICTIONS THAT APPLY TO ALL FORMER EMPLOYEES**

*18 U.S.C. 207(a)(1). Lifetime ban on making a communication or appearance involving particular matters involving a specific party or parties.*

Prohibits all former Government employees from knowingly making, with the intent to influence, any communication to or appearance before an employee of any department, agency, or court of the United States on behalf of any other person (except the United States) in connection with a particular matter involving a specific party or parties when (1) the employee was personally and substantially involved in the matter as a Government employee and when (2) the United States is a party or has a direct and substantial interest in the matter. This restriction also applies to former special Government employees.

➤ **Important Definitions:**

*“Communication to or appearance before”* means representational appearances and communications before a Federal Government department, agency or court, made in an attempt to influence the federal Government concerning a particular matter in which the former employee was personally and substantially involved.

*“Particular matter involving specific parties”* means a proceeding affecting the rights of the parties or an isolatable transaction or related set of transactions between identifiable parties, and the United States must be a party to OR have a direct and substantial interest in the matter.

Note: The term “particular matter involving specific parties” includes any investigation, application, request for a ruling or determination, rulemaking that applies to specific parties, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding. It does not include general rulemaking, general legislation or general policy issues.

“Personal and substantial participation” means direct participation as a Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise. It includes the participation of a subordinate when that subordinate was actually directed by the former employee in the matter. The participation must be of significance to the matter or form a basis for a reasonable appearance of such significance. Involvement on a peripheral issue may not be enough. A finding of substantiality should be based not only on the effort devoted to a matter, but on the importance of the effort.

- Example 1.

A Program Analyst works on a lawsuit involving Q Company. After leaving Federal service, the former employee accepts a job with a consulting firm that has Q Company as a client. She is asked by the consulting firm to represent it before the Environmental Protection Agency in connection with that same lawsuit.

She may not do so. For life, she may only represent the United States before an Executive Branch or Judicial Branch agency on this matter.

- Example 2.

A Government employee, who participated in recommending specifications for a contract awarded to Q Company for the design of certain ground water testing programs, joins Q Company and does work under the contract. He is asked to accompany a company vice-president to a meeting to state the results of a series of trial tests, and does so. No violation occurs when he provides the information to his former agency. During the meeting a dispute arises as to some terms of the contract, and he is called upon to support Q Company’s position.

He may not do so. If he had reason to believe that the contractual dispute would be the subject of the meeting, he should not have attended. Communications which do not include an “intent to influence” are not prohibited.

*18 U.S.C 207(a)(2). Two-year restriction on particular matters involving a specific party or parties where the matters were under your official responsibility.*

Prohibits all former Government employees from knowingly making, with the intent to influence, any communication to or appearance before an employee of any department, agency or court of the United States on behalf of any other person (except the United States) in connection with a particular matter involving

a specific party or parties when the employee knows or reasonably should know that the matter was actually pending under his or her official responsibility during their last year of Government service.

➤ **IMPORTANT DEFINITIONS:**

“Communication to or appearance before” - is defined the same way as for 18 U.S.C. 207(a)(1).

“Particular matter involving specific parties” - is defined the same way as for 18 U.S.C. 207(a)(1)

“Official Responsibility” - means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action. Official responsibility is usually defined by statute, regulations, written delegation of authority or job description. **AN EMPLOYEE’S RECUSAL FROM OR OTHER NON-PARTICIPATION IN A MATTER DOES NOT REMOVE IT FROM HIS OR HER OFFICIAL RESPONSIBILITY.**

“Actually pending” - means the matter was in fact referred to or under consideration by persons within the employee’s area of responsibility.

“Last Year of Service” - means this two-year prohibition only applies to matters that were under one’s official responsibility during the former employee’s last year of service.

○ Example 1.

During his tenure as Division head, an officer’s subordinates undertook major changes in agency general enforcement standards.

Eighteen months after terminating Government employment, he is asked to represent Z Company, which believes it is being unfairly treated under the enforcement program. The Z Company matter first arose on a complaint filed after the Division head terminated his employment.

He may represent Z Company because “general enforcement standards,” like general rulemaking and policy making, are not considered particular matters for purposes of the prohibitions under 18 U.S.C. 207. In addition, the matter (general enforcement standards) pending under the former Division head’s official responsibility was not a particular matter involving “a specific party”.

○ Example 2.

Within two years after terminating, a bureau’s former Budget Officer is asked to represent Q Company in a dispute arising under a contract which was in effect during

the officer's last year in office. The dispute concerns an accounting formula under the contract, a matter in which a subordinate of the former officer was consulted.

She may not represent Q Company on this matter. Even though the subordinate was not the decision maker, the involvement of that person in making a recommendation on the latter was under the "official responsibility" of the former Budget Officer during her last year in office.

*18 U.S.C. 207(b). One-year restriction on aiding and advising with regard to a trade or treaty negotiation.*

For one year after Government service terminates, no former employee may knowingly REPRESENT, AID OR ADVISE, on the basis of covered information, any other person (except the United States) concerning any ongoing trade or treaty negotiation in which, during his/her last year of Government service, he/she participated personally and substantially as an employee.

Note: Unlike the lifetime and two-year bans, this restriction prohibits behind the scenes AID OR ADVICE to anyone other than the United States in connection with the particular trade or treaty negotiation.

➤ **IMPORTANT DEFINITIONS:**

"Trade negotiation" - means negotiations which the President determines to undertake to enter into a trade agreement pursuant to section 1102 of the Omnibus Trade and Competitiveness Act of 1988, and does not include any action taken before that determination is made. A trade negotiation commences to be "ongoing" when, at least 90 days before entering into a trade agreement, the President notifies both the House of Representatives and the Senate of his intention to enter into an agreement.

"Treaty" - means an international agreement made by the President that requires the advice and consent of the Senate. A treaty negotiation commences to be "ongoing" at the point when both (1) the determination has been made by a competent authority that the outcome of a negotiation will be a treaty, and (2) discussions with a foreign government have begun on a text.

"Covered Information" - means agency records which were accessible to the employee, which he or she knew or should have known were designated as exempt from disclosure under the Freedom of Information Act and which concern a negotiation in which the employee participated personally and substantially during his or her last year of Government service.

- EXAMPLE: A former employee attends a hearing on a treaty in which she had participated while in her last year of Government service. She speaks with the representative of

a private party during the hearing. If, during that conversation, the former employee lends assistance to the representative, a violation occurs.

### **PENALTIES**

(a) Whoever engages in conduct constituting an offense of 18 U.S.C. 207 shall be imprisoned for not more than one year or fined an amount not to exceed \$50,000, or both.

(b) Whoever WILLFULLY engages in conduct constituting an offense of 18 U.S.C. 207 shall be imprisoned for not more than five years or fined an amount not to exceed \$50,000 or both.

(c) The Attorney General may bring a civil action in the appropriate U.S. District Court against any person who engages in conduct constituting an offense under Section 207 of Title 18 and, upon proof of such conduct by a preponderance of the evidence, such person shall be subject to a civil penalty of not more than \$50,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater. The imposition of such a civil penalty does not preclude any other criminal or civil statutory, common law or administrative remedy, which is available to the U.S. or any other person.

(d) If the Attorney General has reason to believe that a person is engaging in conduct constituting an offense under 18 U.S.C. 207, the Attorney General may petition an appropriate U.S. district court for an order prohibiting that person from engaging in such conduct. The filing of such a petition does not preclude any other criminal or civil statutory, common law or administrative remedy, which is available to the U.S. or any other person.

**THIS DOCUMENT PROVIDES ONLY A SUMMARY OF THE POST  
EMPLOYMENT PROHIBITIONS OF 18 U.S.C. 207. IF YOU HAVE ANY  
QUESTIONS REGARDING ANY OF THESE RESTRICTIONS, YOU SHOULD  
SEEK THE ADVICE OF YOUR SERVICING ETHICS COUNSELORS:**

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