



2016 ETHICS ORIENTATION

For State of Illinois Employees

Subject to the Authority of the Office of Executive Inspector General
for the Agencies of the Illinois Governor

Note: This training course has been developed in accordance with the requirements of the State Officials and Employees Ethics Act (5 ILCS 430/5-10). It has been developed for this purpose under the direction of the Office of Executive Inspector General for the Agencies of the Illinois Governor ("the OEIG"). Not for use by other than State of Illinois employees, appointees or officials without the express prior consent of the OEIG.

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Introduction/General Principles

“[R]espondent knowingly and intentionally made numerous material omissions and knowingly and intentionally made materially false, misleading and evasive statements during the course of his interviews with OEIG investigators.”

(EEC Decision 14-EEC-003)

– These words are taken from an Executive Ethics Commission decision to levy \$4,000 in fines against a former IDOT section chief who violated the Ethics Act by, among other things, making more than 10 hours worth of political phone calls on his personal mobile phone while on compensated time working for the state.

As an employee of the State of Illinois, you are subject to various laws, rules, and policies, some of which apply only to individuals who work for the state and some of which may be particular to your agency. Some of these, including the State Officials and Employees Ethics Act (Ethics Act), 5 ILCS 430 et seq., are intended to ensure that the functions of state government are conducted with fairness, honesty, and integrity. This, in part, is what it means to follow the principles of **ethics**.

To act ethically, you must use state-provided resources in the most productive and efficient way possible and generally, only for the work of state government. You must avoid placing your personal or financial interests above those of the state. If you have knowledge of conduct by a state employee, appointee, or official, or those who do business with the state that is either unethical or unlawful, you have an obligation to notify the appropriate authorities.

It is your responsibility to become familiar with and obey the laws, rules, policies, and regulations that apply to you. If you have a question about either the legality or ethics of a matter related to state government, you may discuss the question with the ethics officer for your state agency.

Ethics Officers

Each state agency is required to designate an ethics officer. Ethics officers:

- act as liaisons between their state agencies and the appropriate executive inspector general and the Executive Ethics Commission;
- review employees' statements of economic interests before they are filed with the secretary of state (these statements will be discussed later in this training); and
- provide guidance to state employees in the interpretation and implementation of the State Officials and Employees Ethics Act.

For your reference, a list of ethics officers for entities under the jurisdiction of the Office of Executive Inspector General for the Agencies of the Illinois Governor may be found via the Internet at: <http://www.inspectorgeneral.illinois.gov>.

Executive Ethics Commission

(www2.illinois.gov/eec)

Established in 2004, the Executive Ethics Commission (EEC), in conjunction with the executive inspectors general and the attorney general, is responsible for the oversight of, compliance, implementation, and enforcement of the State Officials and Employees Ethics Act. The commission consists of nine commissioners, appointed on a bipartisan basis, and it exercises jurisdiction over all officers, appointees, and employees of state agencies under the six executive branch constitutional officers of the state, as well as the nine state public universities. It also has jurisdiction over the four regional transit boards, i.e., the RTA, the CTA, Metra, and Pace.

The EEC promulgates rules governing investigations of the executive inspectors general, prepares public information materials to facilitate compliance with ethics laws, provides guidance to ethics officers, reviews reports of activity from executive inspectors general and reports of ex parte communications from ethics officers, oversees employee ethics training, and conducts administrative hearings related to alleged violations of the Ethics Act. For additional information about the Executive Ethics Commission, visit its website at: <http://www2.illinois.gov/eec>.

Office of Executive Inspector General

(www.inspectorgeneral.illinois.gov)

Established in 2003, the Office of Executive Inspector General for the Agencies of the Illinois Governor (OEIG) is an independent state agency. Its primary function is to investigate fraud, waste, abuse, and violations of the Ethics Act and other laws, rules, and policies in governmental entities. The OEIG investigates allegations of misconduct by the employees, appointees, and elected officials under its jurisdiction. The OEIG also has responsibility for investigating alleged violations by those doing business with entities under its jurisdiction.

The OEIG's jurisdiction includes:

- the governor;
- the lieutenant governor;
- the board members and employees of and vendors and others doing business with the regional transit boards (i.e., the RTA, the CTA, Metra, and Pace);
- the board members and employees of and vendors and others doing business with the state public universities; and
- all employees of and vendors and others doing business with state agencies and departments of the executive branch of state government, except for those agencies under the jurisdiction of other executive branch constitutional officers, specifically the attorney general, the comptroller, the treasurer, and the secretary of state. Other inspectors general have jurisdiction over the four executive branch constitutional officers not under the OEIG's jurisdiction, and the state legislature.

To file a complaint with the OEIG, please use one of the following means:

- (1) Call 866.814.1113
- (2) Fax 312.814.5479
- (3) TTY 888.261.2734
- (4) Email OIG.ComplaintDB2@Illinois.gov
- (5) Log in to www.inspectorgeneral.illinois.gov and click on “complaints”
- (6) Mail your complaint to one of the OEIG offices:

OEIG
69 West Washington, Suite 3400
Chicago, Illinois 60602

OEIG
607 East Adams, 14th Floor
Springfield, Illinois 62701

For additional information about the Office of Executive Inspector General for the Agencies of the Illinois Governor, visit its website at: <http://www.inspectorgeneral.illinois.gov>.

Ethics Training

(Ethics Act, Section 5-10)

“Even if [the respondent] may have felt pressured by supervisors to ensure his subordinates took their ethics training ... these facts do not justify him taking ethics training for four employees without their knowledge.” (OEIG Case #13-01848)

– These are words from a publicly disclosed OEIG investigative report explaining how an employee of Metra violated provisions of the Ethics Act by completing ethics training for other Metra employees.

The State Officials and Employees Ethics Act (5 ILCS 430/5-10) requires state employees to complete, at least annually, an ethics training program conducted by their state agencies. It also requires that new employees complete ethics training within 30 days of the commencement of employment or appointment. This training program is intended to allow you to meet your obligation to comply with those requirements.

It is the responsibility of each state agency to conduct ethics training and to report to the appropriate ultimate jurisdictional authority regarding those individuals who have or have not completed training.

Your state agency will notify you and provide instructions to you concerning when and how to participate in ethics training.

Official Misconduct, Bribery, and Solicitation Misconduct

(Criminal Code of 2012 (720 ILCS 5/33-3))

A Department of Labor employee delivered “an inspection report indicating that he had witnessed the ... load test. [He] filed it knowing that he did not attend the load test. In fact, he told OEIG investigators that he sat in his vehicle for an hour and a half ..., never spoke to anyone about the test during that time, and never saw the ski lift in operation on that day. ... This failure to observe the load test is particularly egregious given that as [he] himself stated, an accident on a ski lift is a major event due to the potential for serious injury of anyone subsequently riding that ski lift.” (OEIG Case #11-00621)

– These words are from a publicly disclosed OEIG investigation concerning the misconduct of a former Department of Labor employee who submitted false inspection reports.

► Official Misconduct

Public officers or employees, including state employees, commit official misconduct when, in their official capacity, they:

- intentionally or recklessly fail to perform any mandatory duty as required by law;
- knowingly perform an act which they know they are forbidden by law to perform;
- perform an act in excess of their lawful authority with intent to obtain personal advantage for themselves or another; or
- solicit or knowingly accept for the performance of any act a fee or reward which they know is not authorized by law.

Public officers or employees convicted of violating any of these provisions forfeit their office or employment. In addition, official misconduct is Class 3 felony.

For Example:

A state employee who exceeds his lawful authority to obtain something of value for his personal benefit could be found to have committed official misconduct.

► Bribery

Among other circumstances, **bribery** occurs when state employees ask for or accept property or personal advantage, such as, but not limited to, money or free services, in exchange for taking or not taking (or influencing someone else to take or not take) an official act.

Q & A

Q. Is it unlawful for a state employee to request or accept anything of value in exchange for authorizing a state contract to a vendor?

A. Yes. If state employees or officials request or accept a bribe, they could face criminal charges.

It is also a criminal violation of the law if state employees or officials fail to report a bribe to the Illinois State Police.

► Reporting Bribery

Any state official or employee who is offered a bribe, even if they decline to accept the bribe, must report the attempt to the Department of State Police. Failure to report a bribe or an offer of a bribe is a Class A misdemeanor.

► Solicitation Misconduct

If state employees have regulatory authority over a person, such as responsibility to investigate, inspect, license, or enforce regulatory measures related to the person's business or activity, and they knowingly ask for or receive political campaign contributions from that person, they have committed **solicitation misconduct**. If convicted of solicitation misconduct, state employees will lose their state jobs, in addition to criminal penalties.

Personnel Policies

(Ethics Act, Section 5-5)

State employees are required to follow practices that comply with the personnel policies set forth by the Office of the Governor and by their state agencies. By law, these policies must include elements related to:

- work time requirements;
- documentation of time worked;
- documentation for reimbursement for travel on official state business;
- compensation; and
- earning and accrual of state benefits for those eligible for benefits.

Time Sheets

(Ethics Act, Section 5-5)

The law requires your agency to have a policy requiring you to periodically submit time sheets documenting the time spent each day on official state business to the nearest quarter hour. **As a state employee, you are expected to accurately report the hours that you work for the state, on a timely basis, in a format directed by your state agency.**

“After being made aware [that he had been under surveillance, the former State employee] ... stated that he wished to correct information that he had previously provided...” [He] then described his abuse of State time and misuse of a State vehicle as “extensive”... (OEIG Case #11-02060)

– These are words from a publicly released OEIG investigative report. The OEIG found that a former IDOC employee, among other forms of misconduct, violated IDOC timekeeping policy. The employee resigned.

Hiring Practices

(*Rutan v. Republican Party of Illinois*, 497 U.S. 62 (1990); Administrative Order No. 1 (1990), No. 2 (1990), No. 1 (1991), and No. 2 (2009))

“The actions of IDOT officials violated Administrative Order No. 2 (2009) and IDOT’s own personnel policies. As a result, hundreds of individuals were hired without having to go through the *Rutan* hiring process even though they performed *Rutan*-covered duties” (OEIG Case #11-01567)

– These are words from a publicly disclosed OEIG investigative report explaining how Illinois Department of Transportation officials improperly approved the hiring of “Staff Assistants” to perform *Rutan*-covered duties. Some IDOT officials resigned.

The overwhelming majority of employee positions in state government are subject to hiring procedures implemented to comply with a 1990 U.S. Supreme Court decision, *Rutan v. Republican Party of Illinois*, 497 U.S. 62 (1990), commonly referred to as “*Rutan*.” These procedures prohibit consideration of political affiliation or support or lack thereof in connection with hiring, promotion, transfer, or recall from layoff, relating to most state jobs. That is, most positions in state government must be filled on a merit-basis, without regard to any applicant’s political affiliations. Only a limited number of state jobs are exempt from these requirements.

Procedures for making hiring decisions for *Rutan*-covered positions have been established by the governor and apply to all agencies, boards and commissions under the jurisdiction of the Office of the Governor. These hiring procedures mandate that:

- any employee who receives a personnel request, referral, or recommendation for a *Rutan*-covered position must refer the person making the request, referral, or recommendation to the Department of Central Management Services Governmental Affairs department for disposition;
- grading of employment applications must be completed on a “blind” basis; that is, applicants’ names and any personally identifiable information must be redacted from applications before they are graded;
- grading of applications must be free from all political considerations;

- the creation of lists of eligible candidates for a *Rutan*-covered position must be done on a blind basis; and
- job descriptions for *Rutan*-covered positions must be reviewed and, if necessary, updated prior to posting, to reflect current duties, responsibilities, and requirements.

Furthermore:

- any employee who participates in an interview of a candidate for a *Rutan*-covered position must have previously and successfully completed training related to *Rutan* hiring practices;
- *Rutan* interviewers must make their assessments of candidates based on pre-determined and uniform questions related to the position's job description;
- employment decisions must be properly documented, including a written justification for the agency's employment decision; and
- the agency director or his or her designee must certify that the employment decision was not based on political party affiliation or support (or lack thereof).

In 2009, the General Assembly amended the Ethics Act to, among other things, expand the duties of the OEIG to include the review of hiring and employment files so as to ensure compliance with *Rutan* and applicable employment laws. As part of its hiring monitoring program, the OEIG reviews various agency hiring practices.

Q & A

- Q. My brother has applied for a *Rutan*-covered position and I know he's well qualified. Is it okay for me to put in a good word regarding my brother with the people preparing a candidate list for this *Rutan*-covered position?
- A. No. The creation of candidate lists for *Rutan*-covered positions must be done on a blind basis; that is, without knowledge of the candidates' names. Recommendations like the one described will have no weight in the *Rutan* covered hiring process.
- Q. What should I do if someone offers me a recommendation concerning a potential candidate for a *Rutan*-covered position for which I am responsible?
- A. Explain to the individual who offered the recommendation that there are established procedures for filling *Rutan*-covered positions, including that all requests, referrals, or recommendations must be submitted to the CMS Governmental Affairs Department.
- Q. What should I do if someone directs me to place someone in a *Rutan*-covered position on the basis of the job applicant's political affiliation?
- A. Report the matter to your ethics officer, the OEIG or the Executive Ethics Commission.

Conflicts of Interest

[A DHS employee authorized Temporary Assistance for Needy Families (TANF) benefits for] “family members of [her] friend and former co-worker. These individuals were also DHS clients... Therefore, the allegation that [the employee] violated DHS policies by engaging in conduct that constituted a conflict of interest is **FOUNDED**.” (OEIG Case #08-00494)

- These words are from a publicly released OEIG investigative report. The OEIG found that the state employee violated DHS’s conflict of interest policy by approving TANF and SNAP benefits for friends and relatives.

Many state employees have personal, financial, or business interests, second jobs, or volunteer activities that have the potential to conflict with their official work on behalf of the state.

A conflict of interest occurs when the interests of a state employee are in conflict with the interests of the state. This might occur, for example, when a decision or recommendation that an employee makes, relative to his or her official position, either affects or is affected by his or her personal interests or those of a family member, friend, or associate.

For Example:

An employee has a conflict of interest when his secondary employment duties interfere with his state employment duties.

Official actions taken by state employees, such as, but not limited to, making a hiring decision or recommendation, or approving a license application, or granting a contract, must be in the best interests of the state. State employees’ official actions must not be influenced by their own personal or financial interests, or those of their friends, family members, or associates.

Do What's Right!

Recommended Best Practice

In any instance where you believe you may have, or appear to have a conflict of interest with respect to your state employment, it is your responsibility to immediately take steps to appropriately disclose the conflict and take action to remedy it. Disclosure should be made in accordance with any applicable policies of your state agency. In the absence of a relevant policy, disclosure should be made to your supervisor or to your agency’s ethics officer. Every immediate effort should be made either to eliminate the conflict or to recuse yourself from any official business related to the conflict. As a state employee you should be alert to the appearance of conflicts of interest in your official duties.

In certain instances, a state employee's conflict of interest may violate the law. For example, it would be unlawful for a state employee to provide confidential information about a vendor selection process to a business associate whose company is vying for state business. The use of such insider information to benefit themselves or another person is unlawful under the Illinois Procurement Code (30 ILCS 500/50-50).



Conflicts of Interest Lesson Review

Scenario #1

Kyle works for an agency that has been planning a large project for months. As the launch date approaches, Kyle discovered that one aspect of the project has been neglected. In order to catch up, Kyle suggests hiring someone as an emergency appointment to help out. While Kyle's agency has a nepotism policy against hiring nephews, Kyle's nephew just graduated from college and is looking for work. Can Kyle hire his nephew for the emergency appointment?

- A. No, Kyle cannot hire his nephew in violation of the agency nepotism policy.
- B. Yes, if Kyle's nephew is qualified for the emergency appointment, Kyle can hire him.
- C. Yes, if Kyle gives the hiring authority to someone else, Kyle can then recommend his nephew to that person, who can make the hire.

Select the best answer(s) and then compare your response to the explanation below.¹

Scenario #2

Andrea, a state employee, is married to a small business owner whose business is licensed by the agency that Andrea works for. Does her husband's business cause Ramona to have a conflict of interest?

- A. Yes. Andrea has a conflict of interest.
- B. No, because conflicts of interest only relate to matters involving state regulatory decisions.
- C. Maybe, depending upon her official duties, Andrea's job duties may result in her having a conflict of interest based on her husband's business.

¹ The best response to Scenario #1 is A. State hiring should be based on what is best for the state. Many statutes, administrative orders, and departmental rules apply to hiring, and these should not be circumvented in order to facilitate personal preferences. Kyle should not recommend his nephew to a person chosen by Kyle to make the final decision.

Select the best answer(s) and then compare your response to the explanation below.²

Prohibited Political Activities

(Ethics Act, Section 5-15)

“In total, Respondent made dozens of prohibited political telephone calls during State-compensated time...” (EEC decision #13-EEC-021)

– These are words from an Executive Ethics Commission decision to levy a \$1,500 fine against a state employee who engaged in prohibited political activity by placing telephone calls to schedule a campaign event for a candidate for the General Assembly.

State employees must not intentionally perform any of the following activities during state-compensated time other than vacation, personal, or compensatory time off. Also, state employees may never intentionally misappropriate state property and resources (such as state-provided telephones, cell phones, photocopiers, email accounts, or computers) for the benefit of any campaign for elective office or any political organization:

- Prepare for, organize, or participate in any political meeting, political rally, political demonstration, or other political event

For example, a state employee may not send an email to fellow workers during work hours or using a state email account at any time, encouraging them to attend a rally for a candidate for public office.

- Solicit contributions, including, but not limited to, purchasing, selling, distributing, or receiving payment for tickets for any political fundraiser, political meeting, or other political event
- Solicit, plan the solicitation of, or prepare any document or report regarding any thing of value intended as a campaign contribution
- Plan, conduct, or participate in a public opinion poll in connection with a campaign for elective office or on behalf of a political organization for political purposes, or for or against any referendum question
- Survey or gather information from potential or actual voters in an election to determine probable vote outcome in connection with a campaign for elective office or on behalf of a political organization for political purposes, or for or against any referendum question

² The best response to Scenario #2 is C. Andrea’s husband’s business may or may not cause her to have a conflict of interest depending on whether her official actions may affect or be affected by her husband’s business. If, for example, Andrea is involved in licensing decisions or policy making that affects her husband’s business, then Andrea has a conflict. She should examine her agency’s policies to ensure that she complies with them, discuss the situation with her agency’s ethics officer, and, if necessary, take actions to avoid a conflict of interest if and when one presents itself.

For example, it is unlawful for state employees, during their workday, to call potential voters on behalf of a candidate to find out whom they might vote for in an upcoming election.

- Assist at the polls on election day on behalf of any political organization, candidate for elective office, or for or against any referendum question
- Solicit votes on behalf of a candidate for elective office or a political organization, or for or against any referendum question, or help in an effort to get voters to the polls
- Initiate for circulation, prepare, circulate, review, or file a petition on behalf of a candidate for elective office or for or against any referendum question
- Make a contribution on behalf of any candidate for elective office in that capacity or in connection with a campaign for elective office
- Prepare or review responses to candidate questionnaires in connection with a campaign for elective office or on behalf of a political organization for political purposes
- Distribute, prepare for distribution, or mail campaign literature, campaign signs, or other campaign material on behalf of any candidate for elective office or for or against any referendum question
- Campaign for an elective office or for or against any referendum question
- Manage or work on a campaign for elective office or for or against any referendum question

For example, it is unlawful for state employees to use state-provided telephones, even during an uncompensated lunch period or before or after their normal work hours, to work on someone's campaign for elective office.

- Serve as a delegate, alternate, or proxy to a political party convention
- Participate in any recount or challenge to the outcome of any election
- Compel a subordinate state employee to perform prohibited political activities at any time.

For the most part, the law allows State employees to engage in political activity only on their own time and with their own resources. However, even when these conditions are met, there are exceptions. For example, certain public employees may never solicit certain people or businesses for campaign contributions, if the employee's duties include regulatory oversight of the person or business who is solicited.

Do What's Right!

Recommended Best Practice

In some instances, state agency policies or the law may more severely restrict the political activities of certain state employees, including those activities that may take place outside of the time during which those employees work for the state. Check your agency's policies to ensure that you comply with them.



Prohibited Political Activities Lesson Review

Scenario #3

Is it lawful for a state employee to forward a single email promoting a candidate for elective office to a small number of friends who are not state employees using a state email account if the employee does so outside of his or her state work hours?

- A. Yes, because the message is brief and makes minimal use of the state email account.
- B. No. The Ethics Act prohibits the intentional misappropriation of state property or resources for purposes of a prohibited political activity.
- C. Yes. The activity takes place outside of the employee's state-compensated work time.

Select the best answer(s) and then compare your response to the explanation below.³

Scenario #4

Tiffany works for a state department. While driving to work and before she begins her work day, she often speaks with her neighbor about his candidacy for an elected office. Tiffany and the neighbor make over 50 phone calls in a two-month period, discussing the petition drive to get the neighbor on the ballot.

Did Tiffany engage in prohibited political activity?

- A. Yes. As a public employee, Tiffany cannot speak to candidates about circulating petitions.
- B. Yes. 50 phone calls in a two-month period is almost one per day; that's too many for a state employee.

³ The best response to Scenario #3 is B. The Ethics Act prohibits this and various other political activities from being performed through the misappropriation of state property or resources, such as but not limited to telephones, fax machines, copiers, computers, and email accounts. There are no exceptions to these restrictions based on the insignificance of the misappropriation. Furthermore, the prohibition against the misappropriation of state property and resources applies at all times.

- C. No. None of the phone calls took place on state-compensated time, or through the misappropriation of state property.

Select the best answer(s) and then compare your response to the explanation below.⁴

Political Contributions on State Property

(Ethics Act, Section 5-35)

As a state employee, you may not intentionally solicit, accept, offer, or make political campaign contributions on state property. These prohibitions also apply to public officials, candidates for elective office, persons required to register under the Lobbyist Registration Act, or any officers, employees, or agents of any political organization.

“State property” means any building or portion thereof that is owned or exclusively leased by the state. “State property” does not include any building or portion thereof that is leased to another entity.

Prohibited Offer or Promise

(Ethics Act, Section 5-30)

A state employee, appointee, or official may not promise **anything of value** related to state government in consideration for a contribution to a political committee, political party, or other entity that has as one of its purposes the financial support of a candidate for elective office.

If another state employee or official asks or directs you to make a prohibited offer or promise, you have a duty to report it to your ethics officer or the OEIG.

In the context of a prohibited offer or promise related to a political contribution, **anything of value** includes, but is not limited to:

- positions in state government;
- promotions;
- salary increases;
- other employment benefits, including, but not limited to, modified compensation or benefit terms; compensated time off; or change of title, job duties, or location of office or employment. An employment benefit may also include favorable treatment in determining whether to bring any disciplinary or similar action or favorable treatment during the course of any disciplinary or similar action or other performance review;
- board or commission appointments;
- favorable treatment in any official or regulatory matter;
- the award of any public contract; and

⁴ The best response to Scenario #4 is C. State employees are generally allowed to participate in political activity, provided they do so while on their own time or while on vacation, personal, or compensatory time off, and when not misappropriating state resources to do so.

- action or inaction on any legislative or regulatory matter.

For Example:

It is unlawful for a state employee, appointee, or official to offer an action by a state agency, or to offer someone a state job or to offer an appointment to a state board, or to offer the award of a state contract, in exchange for a political campaign contribution.

Prohibited Public Service Announcements and Other Promotional Material

(Ethics Act, Section 5-20)

The Ethics Act prohibits any public service announcements or advertisements on behalf of any state administered program and that contain the proper name, image, or voice of any executive branch constitutional officer or member of the General Assembly; from being broadcast or aired on radio or television, printed in a commercial newspaper or commercial magazine, or displayed on a billboard or electronic message board at any time.

Furthermore, the proper name or image of any executive branch constitutional officer or member of the General Assembly may not appear on any bumper stickers, commercial billboards, lapel pins or buttons, magnets, stickers and other similar promotional items that are not in furtherance of the person's official state duties or governmental and public functions, if designed, paid for, prepared, or distributed using public funds.

Ban on Gifts from Prohibited Sources

(Ethics Act, Sections 10-10, 10-15, 10-30, and 10-40)

“... [The IDOA employee] violated the Ethics Act's gift ban prohibition when he intentionally solicited [a state vendor] for a free “roll or two” of DuQuoin Fair beer tickets...” (EEC decision #14-EEC-006)

– These are words from an EEC decision to fine an IDOA manager for intentionally soliciting 1,000 to 2,000 free beer tickets valued at \$4.00 per ticket from a prohibited source. The manager was fined \$5000 by the EEC.

Generally, as a state employee, you should not ask for or accept anything of value (other than compensation or reimbursement you receive from the state) in relation to your position with the state. Asking for or accepting a gift may be illegal under the Ethics Act, or prohibited by your state agency's policies. Your state agency may have its own policies, which in some instances, may be more restrictive than the Ethics Act's gift ban. Furthermore, anything of value, if offered to you **in exchange for an official act**, may be considered a bribe. Bribery is a Class 2 felony.

Gifts are defined by the Ethics Act to include, among other things, tickets to sporting events, hospitality, specially discounted merchandise or services, entertainment, loans, reimbursement of travel expenses, gratuities, cash, food, drink, and honoraria for speaking engagements.

Under the Ethics Act, state employees may not intentionally solicit or accept gifts from certain individuals or entities defined by law as a “prohibited source,” nor may they accept gifts in violation of any federal or state statute, rule, or regulation. It is also unlawful for state employees’ spouses or immediate family members living with them to intentionally solicit or accept a gift from a prohibited source.

In summary, **prohibited sources** include a person or entity that:

- seeks official action by the state employee or by the constitutional officer, state agency, or other employee directing the employee;
- does business or seeks to do business with the employee or with the constitutional officer, state agency, or other employee directing the employee;
- conducts activities that are regulated by the employee or by the constitutional officer, state agency, or other employee directing the employee;
- has interests that may be substantially affected by the performance or non-performance of the official duties of the state employee;
- is a registered lobbyist under the Lobbyist Registration Act; or
- is an agent of, a spouse of, or an immediate family member who is living with a prohibited source.

Under the Ethics Act, there are a limited number of specific circumstances under which you may lawfully accept certain items of value from a prohibited source.

The list of exceptions is limited to:

- opportunities, benefits, and services available to the general public on the same conditions;
- anything for which a state employee pays market value;
- a lawful contribution under the Election Code or activities associated with a fundraising event in support of a political organization or candidate;
- educational materials and missions (as further defined below *);
- travel expenses for a meeting to discuss state business (as further defined below **);
- a gift from an immediate family member, grandparent or grandchild, or other relative listed in Sec. 10-15(6) of the Ethics Act;
- anything provided by an individual on the basis of personal friendship, unless the employee has reason to believe that, under the circumstances, the gift was provided because of the official position of the employee and not because of the personal friendship;
- food or refreshments that do not exceed \$75 per calendar day;
- food, refreshments, lodging, transportation and other benefits resulting from outside business or employment activities, if the benefits are customarily provided to others in similar circumstances and are not offered because of the recipient’s official position;
- intra-governmental or inter-governmental gifts (e.g., gifts between agency employees or between government employees);
- bequests, inheritances, and other transfers at death; and

- any item or items from any one prohibited source during any calendar year having a cumulative total value of less than \$100.

Under the terms of Executive Order 15-09, state employees under the governor's jurisdiction may not accept any more than *de minimus* food or refreshments per day, or items from any one prohibited source during any calendar year. Reimbursements for educational missions and travel expenses must be made directly to the state agency, and missions and travel must be approved in advance by the Executive Director of the Executive Ethics Commission.

*Illinois Executive Ethics Commission Rule 1620.700 states that educational materials and missions are those that have a close connection to the recipient's state employment or the mission of the agency; predominately benefit the public and not the employee; and are approved by the employee's ethics officer in advance of the mission or receipt of the materials. If advance approval is not practicable, the missions and materials shall be reported to the ethics officer as soon as practicable and shall contain a detailed explanation of why approval could not be obtained in advance.

**Illinois Executive Ethics Commission Rule 1620.700 further states that travel expenses for a meeting to discuss state business are those that have a close connection to the recipient's state employment; predominately benefit the public and not the employee; are for travel in a style and manner in character with the conduct of state business; and are approved by the employee's ethics officer in advance of the travel, if practicable. If advance approval is not practicable, the travel shall be reported to the ethics officer as soon as practicable and shall contain a detailed explanation of why approval could not be obtained in advance.

Under the Ethics Act, a state employee who receives a gift from a prohibited source that does not qualify for an exception under the Act, does not violate the Act if the employee promptly:

- returns the gift to the giver; or
- gives the gift or an amount of equal value to an appropriate charity that is exempt from income tax under Section 501(c)(3) of the Internal Revenue Code of 1986.

Do What's Right!

Recommended Best Practice

In general, it is recommended that you simply decline anything of value offered to you (other than compensation or reimbursement you may receive from your state agency) in relation to your official duties. Furthermore, you should be mindful of accepting gifts that have the appearance of being improper.



Gift Ban Lesson Review

Scenario #5

Bryan is a state employee who does not work in licensing, regulation, or procurement. Bryan is invited to attend a conference sponsored by vendors. His agency cannot afford to pay for him to attend the conference, but the conference organizers offer to waive fees. He applies to the Executive Ethics Commission for approval, and the EEC approves of the trip. May Bryan attend the conference?

- A. Yes. With EEC approval, Bryan may attend the meeting to discuss state business.
- B. Yes. Because Bryan is not involved in licensing, regulation, or procurement, the gift ban does not apply to him.
- C. No. If the agency cannot afford the trip, then the employee should not go.

Select the best answer(s) and then compare your response to the explanation below.⁵

Scenario #6

Sharita, who is a state employee, is having mechanical work done on her car. The mechanic offers a 25% discount, worth \$200, to Sharita because the auto shop does a lot of work with her state agency.

Does the Ethics Act permit Sharita to accept this discount?

- A. No. State employees may never accept a gift from a prohibited source.
- B. Yes. Sharita can accept any gifts or discounts offered to her while she is not on state-compensated time.
- C. No. The Ethics Act allows state employees to accept a gift from a prohibited source with certain exceptions. In this case, the \$200 discount is too large and no other exception applies.

Select the best answer(s) and then compare your response to the explanation below.⁶

⁵ The best response to Scenario #5 is A. Aspects of the gift ban apply to all state employees, not just those who are directly involved in licensing, regulation or procurement. The gift ban provisions of the Ethics Act permit acceptance of gifts to travel to attend conferences and other educational missions, and Executive Order 15-09 requires approval from the EEC. If the EEC has approved attendance at the conference, then it is permissible to attend.

⁶ The best response to Scenario #6 is C. The offer is from a prohibited source since it is made by a vendor of Sharita's state agency. The Ethics Act generally prohibits gifts from vendors, but there are exceptions, This gift does not appear

Revolving Door (Post-State Employment) Restrictions

(Ethics Act, Section 5-45)

The Ethics Act contains prohibitions that may, under certain circumstances, affect whether you or a family member who lives with you may lawfully accept employment, compensation, or fees from another person or entity after you leave state employment. No former officer, member, or state employee, or spouse or immediate family member living with such person, shall, within a period of one year immediately after termination of state employment, knowingly accept employment or receive compensation or fees for services from a person or entity if:

- the officer or state employee, during the year immediately preceding termination of state employment, participated personally and substantially in the award of state contracts, or the issuance of state contract change orders, with a cumulative value of \$25,000 or more to the person or entity, or its parent or subsidiary;
- the officer or state employee, during the year immediately preceding termination of state employment, participated personally and substantially in making a regulatory or licensing decision that directly applied to the person or entity, or its parent or subsidiary; or
- the employee is a senior staff member of an agency that took licensing, regulatory or procurement action with regard to the prospective employer.

All State Employees	H List Employees	C List Employees
For one year after leaving State employment, no State employee may accept post-State employment with any entity with regard to which, in the year prior to leaving State employment, he or she participated personally and substantially in the award of contracts with a cumulative value of \$25,000 or more, or in a regulatory or licensing decision that directly applied to that entity, or its parent or subsidiary.	<p>In addition to the prohibitions that apply to all State employees, certain high-level employees, including, among others, constitutional officers, members of constitutionally created boards, certain appointees, heads of State agencies, chief procurement officers, and chiefs of staff, called "H List" employees, are subject to the following prohibition:</p> <p>For one year after leaving State employment, an H List employee may not accept post-State employment with any entity that was a party to State contracts with a cumulative value of \$25,000 or more involving the employee or his or her agency, or that was subject to a regulatory or licensing decision involving the employee or his or her agency, <i>irrespective of whether the employee personally participated in the contract award or regulatory/licensing decision.</i></p>	<p>The Ethics Act requires the identification of a subset of State employees, called "C List" employees, who are required to seek a determination from the OEIG before accepting post-State employment with a non-State employer. State employees are placed on the C List if their positions, by the nature of their duties, may have the authority to participate personally and substantially in the award of State contracts or in regulatory or licensing decisions.</p> <p>State employees who are not on the C List are not <i>required</i> to seek a determination from the OEIG before accepting non-State employment; however, because all State employees are subject the revolving door prohibitions, the EEC's rules provide that any State employee (other than H List employees) <i>may</i> seek a determination from the OEIG.</p>

to meet an exception Sharita can claim. Because this gift is not available to the general public and is worth more than \$100, Sharita should refuse the discount.

Any state employee, other than an H List employee, who is unsure whether he or she was personally and substantially involved in a matter which might restrict their future employment may seek a determination from the OEIG as to whether he or she may accept employment or compensation from a prospective employer. The determination process is described below.

► **Requirements and Procedures that Apply to Employees or Appointees, Who Participate in Contract, Licensing, or Regulatory Decisions**

While employees who are not on the H List may seek a determination of whether they were personally and substantially involved in a matter regarding a prospective employer, certain state employees are required to seek a determination prior to accepting any post-State employment. If you are in a position that, by nature of its duties, may have the authority to participate personally and substantially in the award of state contracts or in regulatory or licensing decisions, you may be instructed in writing by your agency that you must request that the Office of Executive Inspector General determine whether you may accept employment from a non-State employer.

A notice seeking a determination must be made prior to accepting a non-state employment offer, both during your state employment and for a period of one year immediately after ending your state employment.

Determination Process

Within 10 days of notification, the OEIG must determine whether or not you are restricted from accepting the offer.

The OEIG's determination regarding non-state employment will be based on whether, during the year preceding termination, the state employee participated personally and substantially in any contract, regulatory or licensing decision directly applying to the prospective employer, and on the effect that the prospective employment may have had on such decisions.

The OEIG's determination may be appealed to the Executive Ethics Commission by either the affected employee or the Office of the Attorney General **no later than 10 calendar days after** the date of the determination. Therefore, an OEIG's determination is not final until either the time to appeal has expired without appeal or, in the case of an appeal, until the EEC has made its decision.

► **Employment Restrictions for Certain High-Level Employees**

A limited number of state officers, employees, or appointees, in certain high-level positions, are strictly prohibited from knowingly accepting employment or receiving compensation or fees for services from certain individuals or entities during a period of one year after the termination of their state positions, **regardless of whether they were personally involved in regulatory, licensing, or contract decisions.**

These restrictions apply to:

- persons whose appointment to office is subject to the advice and consent of the Senate;
- the head of a department, commission, board, etc., or other administrative unit within the government of the state;
- chief procurement officers, state purchasing officers, and their designees whose duties are directly related to state procurement;
- chiefs of staff, deputy chiefs of staff, associate chiefs of staff, assistant chiefs of staff, and deputy governors;
- members of a commission or board created by the Illinois Constitution; and
- members of the General Assembly or executive or legislative branch constitutional officers.

Persons in the aforementioned positions may not accept employment, compensation, or fees during a one year period after the termination of their state employment from a person or entity, if the person or entity or its parent or subsidiary, during the year immediately preceding termination of state employment was:

- a party to a state contract or contracts with a cumulative value of \$25,000 or more involving the state employee or the employee's agency; or
- was subject to a regulatory or licensing decision involving the state employee or the employee's agency.

There is no determination process for these high-level employees on the H List. The employment restrictions on these positions apply regardless of whether the officer, employee, or appointee participated personally and substantially in the award of the state contract or contracts or the making of the regulatory or licensing decision in question.

If you are wish to accept an offer of employment or compensation by an individual or business that conducted official state business with you or your state agency, you may discuss the matter with your state agency's ethics officer or private legal counsel to ensure that you comply with the law. If you are not on the H List, you may also seek a determination from the OEIG; indeed, if you are on the C List, you are required to seek a determination.

The Executive Ethics Commission has the authority to issue a fine to a state employee in an amount of up to three times the total annual compensation that would have been obtained in violation of the Ethics Act's revolving door employment prohibitions, if a former State employee accept compensation or employment in violation of the Ethics Act Revolving Door provisions. C List employees who fail to seek a determination may face a fine of up to \$5,000.

► **Additional Revolving Door Provisions in the Procurement Code**

In addition to the provisions of the Ethics Act, certain state employees whose principal duties for at least six months are directly related to State procurement are expressly prohibited from engaging in any procurement activity on behalf of a post-State employer relating to the State agency most recently employing them. This prohibition extends for two years after leaving the State agency. Relatedly, a State employee with an offer or contract to work for a vendor at any

time in the future may not negotiate with that vendor on behalf of the State. See Sections 50-15 and 50-30 of the Procurement Code for more details.

► **Additional Revolving Door Restrictions Instituted by Executive Order**

Under the terms of Executive Order 15-09, state employees under the governor’s jurisdiction are prohibited from (1) negotiating post-state employment with an entity that lobbies their agency while working for the state and (2) accepting employment for lobbying for one year after leaving their state position. As with the revolving door provisions of the Ethics Act, these restrictions apply to all state employees under the governor’s jurisdiction regardless of whether you are involved in procurement, licensing or regulatory decisions.



Revolving Door Lesson Review

Scenario #7

Dianne works for a state agency in the procurement office. She regularly manages requests for proposals and participates in agency evaluations of bidder proposals, and has been instructed that she is on the “C-list” of employees who may have authority to participate in the award of state contracts. Dianne’s cousin owns a company that would like to do business with her state agency. The cousin offers to hire Dianne to help the company produce bids. Dianne decides to leave her state employment after giving two weeks’ notice and starts working for her cousin’s company, but does not notify the OEIG of the job offer.

Has Dianne violated any of the revolving door provisions?

- A. No. Dianne can work for a family-owned company without restrictions.
- B. Yes, she cannot work for a company that could bid on state work.
- C. Yes. Even if Dianne believes that her cousin has not previously bid for state contracts, she must notify the OEIG before she can start work.

Select the best answer(s) and then compare your response to the explanation below.⁷

Whistle Blower Protection

(Ethics Act, Article 15 and Whistleblower Act, 740 ILCS 174/1 et seq.)

State employees may be reluctant to report violations of the law, rules, or regulations out of fear that those affected by their report will do something to harm them or their careers. Such **retaliation is against the law.**

⁷ The best response to Scenario #7 is C. Because she is on the C List, Dianne is required to notify and seek a determination from the OEIG **prior to** accepting an offer of employment from her cousin’s business. There are no exceptions for family-owned companies. Also, with approval, c-list employees may work for companies that will bid on state work.

Under the Ethics Act, an officer, state employee, or state agency may not lawfully take any retaliatory action against a state employee for:

- disclosing or threatening to disclose to a supervisor or to a public body an activity, policy, or practice of any executive or legislative branch constitutional officer, member of the General Assembly, state agency, or other state employee that the state employee reasonably believes is in violation of a law, rule, or regulation;
- providing information or testifying before any public body about any violation of a law, rule, or regulation by any executive or legislative branch constitutional officer, member of the General Assembly, state agency, or other state employee; or
- assisting or participating in a proceeding to enforce the State Officials and Employees Ethics Act.

Retaliatory action means the reprimand, discharge, suspension, denial of promotion, demotion, transfer or change in the terms or conditions of the state employee's employment, taken in retaliation for a state employee's involvement in a protected activity.

Whistle blower protections do not however prohibit a state employee from being disciplined for matters unrelated to the above-listed protected activities. For example, a state employee who discloses an unlawful act of another state employee may still be disciplined for failing to complete a required work assignment. Such discipline is allowable if it is demonstrated by clear and convincing evidence that the discipline (in this example, for failing to complete a work assignment) would have been imposed in the absence of the employee's disclosure of the unlawful act.

If a state employee retaliates against another state employee for reporting a violation of law or assisting in an investigation, the individual taking the retaliatory action may be subject to disciplinary action up to and including discharge by his or her state agency, as well as potential administrative action by the Executive Ethics Commission for violating the Ethics Act. In addition, the employee subjected to the retaliatory action could file a lawsuit seeking compensation and other remedies as provided by law.

A list of potential remedies, including, but not limited to reinstatement of employment and back pay, may be found in the State Officials and Employees Ethics Act (5 ILCS 430/15-25). The state circuit courts have jurisdiction to hear cases brought under this section of the Ethics Act.

In addition to the remedies available under the Ethics Act, protections are available to any employee under the Whistleblower Act. Under the Whistleblower Act, it is generally unlawful for any employer to retaliate or **threaten retaliation** for an employee's disclosure of information to a government or law enforcement agency if the employee has reasonable cause to believe that the information discloses a violation of a state or federal law, rule, or regulation.

If an employer retaliates against an employee in violation of the Whistleblower Act, the employee may bring a civil action against the employer that may result in:

- reinstatement of employment and seniority rights;

- back pay, with interest; and,
- compensation for any damages including litigation costs, expert witness fees, and reasonable attorney's fees.

Reporting Violations of Law, Rule, Regulation, or Policy

(Administrative Order #6, 2003) **OEIG Hotline: 866-814-1113**

If you witness misconduct or have evidence of it, you should report it to the proper authorities.

To report a **non-emergency violation** of law, rule, or regulation, you should contact the Office of Executive Inspector General for the Agencies of the Illinois Governor (OEIG) via its **toll-free Hotline** at **866-814-1113**. Questions and/or reports of alleged violations may also be submitted via the Internet by obtaining forms at: <http://www.inspectorgeneral.illinois.gov>. For those who require accommodations for the differently-abled, the OEIG may also be contacted toll-free via a telecommunications device for the disabled (TDD) at 888-261-2734. You may also email a complaint to the OEIG at OIG.ComplaintDB2@Illinois.gov

Complaints may be reported to the OEIG anonymously.

In the event of an emergency situation such as those involving the illegal possession or use of a weapon, you should contact the Illinois State Police or other police agency that can provide the fastest response (for example, by dialing "911").

Rights and Responsibilities during Investigations

(Ethics Act, Section 20-70, EEC Rules, 2 Ill. Admin. Code Section 1620.300, and Administrative Order #6, 2003)

State employees who are asked to provide information related to an investigation conducted by the Office of Executive Inspector General have both rights and responsibilities. As a state employee, you have an obligation to cooperate in such investigations. You must participate in interviews as requested, tell the truth, and not withhold information. Failure to cooperate includes, but is not limited to, intentional omissions and knowing false statements, and is grounds for disciplinary action, including dismissal and / or monetary fines of up to \$5,000.

In the course of an investigation, investigators may request information from any person when the information is deemed necessary for the investigation. The executive inspector general may issue subpoenas to compel the attendance of witnesses and the production of documents and other items for inspection and copying.

In particular, the executive inspector general may request that any state employee truthfully answer questions that relate to matters being investigated. If so requested, no statement or other evidence therefrom may be used against the employee in any subsequent criminal prosecution, unless the employee consents.

Requests for production or viewing of documents or physical objects under state agency control must be made in writing by an executive inspector general. If the recipient of such a request

believes that the release of the subject matter of the request might violate existing rights under state or federal law, the recipient has the right to seek a determination from the Executive Ethics Commission relative to such rights or protections.

As a state employee, you have various additional rights during investigations, including, but not limited to those resulting from EEC rules (2 Ill. Admin. Code Section 1620.300), which specify:

- If investigators reasonably believe an employee who is the subject of the investigative interview will likely face discipline, the investigators must notify the employee whether the underlying investigation is criminal or administrative in nature.
- If the underlying investigation is administrative in nature, the interviewee must be presented a form that outlines the interviewee's rights during the interview, including the right to presence of a union representative or coworker uninvolved in the investigation.
- If the underlying investigation is **criminal** in nature, the interviewee must be presented a form that outlines the interviewee's rights during the interview, including the right to the presence of **an attorney**, union representative or coworker uninvolved in the investigation.

It is the policy of the OEIG that OEIG investigators will present the interviewee with an OEIG form outlining the interviewee's rights unless OEIG investigators reasonably believe at the time of an interview that there are no circumstances under which an interviewee will be likely to face discipline or adverse action.

Investigators may not infringe upon a state employee's right to seek advice from their ethics officer on the interpretation and implementation of the Ethics Act, or to seek advice from private legal counsel.

The full text of the rules governing OEIG investigations may be found at the EEC's website: <http://www2.illinois.gov/eec>.

Ex Parte Communications

(General definition: "Ex Parte" – A Latin term meaning from one party. An ex parte communication is one that is made in the absence of others who are affected by it.)

Laws govern how information received by state agencies and their employees in relation to rulemaking and regulatory, quasi-adjudicatory, investment, procurement, and licensing procedures must be treated, especially when information is received by state employees outside of a public forum. These laws are intended to make these procedures fair and to ensure that related communications received by the state and its employees are appropriately disclosed to others who have an interest in the subject of the communications.

Most state employees are not affected by laws governing ex parte communications; however, if you are an employee of one of the several entities listed on the following pages or are involved in procurement activities or formal rulemaking, it is especially important that you understand these requirements. If you have questions about ex parte communications, please seek appropriate counsel, such as by talking to your agency's ethics officer.

In addition to the ex parte communications rules for procurement, there are similar requirements, with some key differences, related to ex parte communications that apply to (1) rulemaking under the Administrative Procedures Act and (2) regulatory, quasi-adjudicatory, investment, and licensing matters under the Ethics Act. In addition, the Executive Ethics Commission has established specific reporting requirements related to ex parte communications. Also, there are reporting requirements related to ex parte communications that apply to procurement matters under the Procurement Code. These various requirements are discussed below.

► **Ex Parte Communications in Rulemaking** (Administrative Procedures Act, 5 ILCS 100, Section 5-165)

Under the Illinois Administrative Procedures Act, an ex parte communication is defined as any written or oral communication by any person, during the rulemaking period, that provides or requests information of a material nature or makes a material argument regarding potential action concerning a state agency's general, emergency, or peremptory rulemaking that is communicated to the head of the agency or an employee of the agency and is:

- not made in a public forum;
- not a statement limited to matters of procedure and practice; and
- not a statement made by a state employee to fellow employees of the same board or agency.

An ex parte communication that is received by any agency, its head, or its employee must be immediately reported to the agency's ethics officer. The ethics officer must require that the communication be made a part of the record for the rulemaking proceeding and must promptly file the communication with the Executive Ethics Commission. **These requirements under the Illinois Administrative Procedures Act apply to all state agencies.**

The intent of this section of the Administrative Procedures Act is to ensure that all parties who are interested in **administrative rules** under consideration by a state agency are made aware of communication that may occur outside of a public forum between the agency and other interested parties.

► **Ex Parte Communications in Regulatory, Quasi-Adjudicatory, Investment, and Licensing Matters** (Ethics Act, Section 5-50)

Requirements that are different from (albeit similar to) those explained above, apply to ex parte communications involving only the following state agencies:

Executive Ethics Commission
Illinois Commerce Commission
Educational Labor Relations Board
State Board of Elections
Illinois Gaming Board
Health Facilities and Services Review Board
Illinois Workers' Compensation Commission
Illinois Labor Relations Board
Illinois Liquor Control Commission

Pollution Control Board
Property Tax Appeal Board
Illinois Racing Board
Illinois Purchased Care Review Board
State Police Merit Board
Motor Vehicle Review Board
Prisoner Review Board
Civil Service Commission
Personnel Review Board for the Treasurer
Merit Commission for the Secretary of State
Merit Commission for the Office of the Comptroller
Court of Claims
Board of Review of the Dept. of Employment Security
Department of Insurance
Department of Professional Regulation and its licensing boards*
Department of Public Health and its licensing boards
Office of Banks and Real Estate and its licensing boards**
State Employees' Retirement System Board of Trustees
Judges' Retirement System Board of Trustees
General Assembly Retirement System Board of Trustees
Illinois Board of Investment
State Universities Retirement System Board of Trustees
Teachers' Retirement System Board of Trustees

* The Department of Professional Regulation is a division of the Department of Financial and Professional Regulation

** The Office of Banks and Real Estate is a division of the Department of Financial and Professional Regulation

Under the Ethics Act, an ex parte communication is defined as any written or oral communication by any person that imparts or requests information of a material nature or makes a material argument concerning regulatory, quasi-adjudicatory, investment, or licensing matters pending before or under consideration by a state agency that is:

- not made in a public forum;
- not a statement limited to matters of procedure and practice; and
- not a statement made by a state employee to fellow employees of the same board or agency.

An ex parte communication received by an agency, its head or an agency employee from an interested party or its representative, must be promptly made a part of the related official record. "Interested party," means a person or entity whose rights, privileges, or interests are a subject of the matter under consideration by the agency.

An ex parte communication received by an agency, its head, or an agency employee from **other than** an interested party or its representative must be reported to the agency's ethics officer.

The ethics officer must promptly require the communication to become a part of the record and will promptly file the communication with the Executive Ethics Commission.

The intent of this section of the Ethics Act is to ensure that all parties who are interested in certain matters under consideration by the above-listed state agencies are made aware of related communications that may occur outside of a public forum between those state agencies and other interested parties.

► **Applicable EEC Rules** (EEC Rules, 2 Ill. Admin. Code Section 1620.820)

The rules of the Executive Ethics Commission require that any state officer or employee who:

- receives an ex parte communication from a non-interested party as excluded by Section 5-50(b-5) and Section 5-50(d) of the Ethics Act; or
- receives an ex parte communication from any person that imparts or requests material information or makes a material argument regarding an agency's rulemaking pursuant to Section 5-165 of the Illinois Administrative Procedures Act,

shall report this communication within seven days to his or her agency's ethics officer.

The full text of the EEC's rule may be found at its web site: <http://www2.illinois.gov/eec>.

► **Procurement Communications Reporting** (30 ILCS 500/50-39 and EEC Rules, 2 Ill. Admin. Code Section 1620.825)

Among its goals, the Illinois Procurement Code is intended to ensure that state purchases are made fairly and in the best interests of the state. The Procurement Code requires that employees be informed, via annual ethics training, of requirements to report certain communications received by state employees related to state procurement (purchasing) matters.

Under the Procurement Code, any written or oral communication received by a state employee who, by the nature of his or her duties, has the authority to participate personally and substantially in the decision to award a state contract and that imparts or requests **material information** or makes a **material argument** about an active **procurement matter**, must be reported to the state's Procurement Policy Board via its website: <http://pcrs.illinois.gov>.^{*} Communications must be reported as soon as practicable, but not more than 30 days after receipt. No trade secrets or other proprietary information shall be included in any communication reported to the Procurement Policy Board.

- * With respect to the Illinois Power Agency, the communication must be reported by the initiator of the communication, and may be reported also by the recipient.

A procurement communication must be reported if it satisfies all four of the following criteria:

1) It is material

Material information is information that is potentially relevant to determining a course of action, such as information pertaining to price, quantity, and terms of payment or performance.

A **material argument** is a communication that is made to influence a decision relating to a procurement matter. It does not include communications that are limited to general information about products, services, or industry best practices, or a response to a state employee's request for information to evaluate new products, trends, services, or technologies.

In determining whether a procurement communication is material, state employees must consider:

- whether the information conveyed is new or already known; and
- the likelihood that the information would influence a pending procurement matter.

2) It is in regard to a potential action

A **potential action** is one that could affect the initiation, development, or outcome of a procurement matter.

3) It relates to an active procurement matter

An "**active procurement matter**" means a **procurement process** beginning with requisition or determination of need by an agency and continuing through the publication of an award notice or other completion of a final procurement action, the resolution of any protests, and the expiration of any protest or Procurement Policy Board review period, if applicable. "Active procurement matter" also includes communications relating to change orders, renewals, or extensions.

Procurement processes, unless otherwise excluded, are processes of procuring:

- goods, supplies, services, professional or artistic services, construction, leases of real property, capital improvements; and,
- master contracts, contracts for financing through use of installment or lease-purchase agreements, renegotiated contracts, amendments to contracts, and change orders.

Examples of **active** procurement matters include activities such as:

- drafting, reviewing, or preparing specifications, plans, or requirements, including determining the method of source selection;
- drafting, reviewing, or preparing any invitations for bid, requests for proposals, requests for information, sole source procurement justifications, emergency procurement justifications, or selection information;

- evaluating bids, responses, or offers, other communications among an evaluation team and any technical advisors to the team relating to the evaluation of a procurement not yet awarded;
- letting or awarding a contract;
- resolving protests;
- determining inclusion on prequalification lists or prequalification in general;
- identifying potential conflicts of interest or voiding or allowing a contract, bid, offer or subcontract for a conflict of interest;
- allowing a conflict or subcontract pursuant to Section 50-60 of the Illinois Procurement Code; and
- determining, drafting, preparing, executing, denying or approving change orders or the renewal or extension of an existing contract.

4) It is not excluded from the reporting requirements

Exclusions to the reporting requirements include, for example:

- statements by a person publicly made in a public forum;
- statements regarding matters of procedure and practice, such as the format, the number of copies required, the manner of filing, and the status of a matter;
- statements made by a state employee to other employees of the same agency or to employees of the Executive Ethics Commission;
- communications regarding the administration and implementation of an existing contract, except communications regarding change orders or the renewal or extension of an existing contract, which must be reported;
- unsolicited communications providing general information about products, services or industry best practices, before those products or services become involved in a procurement matter; and
- communications received in response to solicitations pursuant to the Illinois Procurement Code (vendor responses to RFPs).

Reports of procurement communications must include:

- the date, time and duration of each communication;
- the identity of each person from whom each communication was received, the individual or entity represented by that person, and any action requested or recommended by that person;
- the identity and job title of the person to whom each communication was made;
- the identity and job title of the person providing a response to each communication, if a response is made;
- a detailed summary of the points made by each person involved in the communication;
- the location(s) of all persons involved in the communication (including their phone numbers, if via telephone); and
- any other pertinent information.

For a more complete explanation of procurement communications reporting requirements, please visit the Procurement Policy Board's website (<http://ppb.illinois.gov>). Rules related to procurement communications reporting may also be found at the EEC's website: <http://www2.illinois.gov/eec>

If you have any questions concerning whether or not a communication is subject to these ex parte rules, you may seek the advice of your state agency's ethics officer.



Ex Parte Communications Lesson Review

Scenario #8

Fernando is a state employee and manages the competitive bidding process for his agency. He recently received an email from a business owner who asks if bids could be submitted in an email attachment. Does Fernando need to report this inquiry to anyone?

- A. No, since the message was limited to matters of procedure and practice.
- B. Yes. Fernando needs to report it to his agency's ethics officer.
- C. Yes. Fernando needs to report it to the Procurement Policy Board.

Select the best answer(s) and then compare your response to the explanation below.⁸

Disclosure of Economic Interests

(Illinois Governmental Ethics Act, 5 ILCS 420 et seq.)

Some state employees are required by law to annually file a statement of economic interests with the secretary of state by May 1 of each year.

Generally, the requirement to file statements of economic interests applies to, among others, compensated state employees who:

- are, or function as, the head of a department, commission, board, division, bureau, authority or other administrative unit within state government, or who exercise similar authority with state government;

⁸ The best response to Scenario #8 is A. In this instance, the business owner's communication was not material and need not be reported. If it had been material, under the Procurement Code, any written or oral communication received by a state employee that imparts or requests material information or makes a material argument about a procurement matter, must be reported to the state's Procurement Policy Board via its website: <http://pcrs.illinois.gov>.

- have direct supervisory authority over, or direct responsibility for the formulation, negotiation, issuance or execution of contracts entered into by the state in the amount of \$5,000 or more;
- have authority for the issuance or promulgation of rules and regulations within areas under the authority of the state;
- have authority for the approval of professional licenses;
- have responsibility with respect to the financial inspection of regulated nongovernmental entities;
- adjudicate, arbitrate, or decide any judicial or administrative proceeding, or review the adjudication, arbitration, or decision of any judicial or administrative proceeding within the authority of the state;
- have supervisory responsibility for 20 or more state employees;
- negotiate, assign, authorize, or grant naming rights or sponsorship rights regarding any property or asset of the state, whether real, personal, tangible, or intangible; or
- have responsibility with respect to the procurement of goods and services.

It is the responsibility of the chief administrative officer of each state agency to annually certify to the secretary of state the names and addresses of those individuals who are required to file a statement. If you are required to file a statement of economic interests, the secretary of state will notify you on or before April 1 annually. This notification typically includes a form for filing the statement. Alternatively, the form may be obtained via the secretary of state's web site at: http://www.cyberdriveillinois.com/publications/pdf_publications/i188.pdf.

The information required by the statement of economic interests includes, for example, but is not limited to:

- the name and means of ownership that a state employee may have in any entity doing business in the state of Illinois, in which the ownership interest is in excess of \$5,000 (including, for example, real estate or stock, but not including a time deposit in a bank nor any debt instrument);
- the name and address of any professional organization in which the state employee is an officer, director, associate, partner, or proprietor from which the state employee derived income in excess of \$1,200 during the preceding calendar year;
- the identity (such as, the address or legal description) of any capital asset such as real estate from which a capital gain of \$5,000 or more was realized during the preceding year;
- the identity of any compensated lobbyist with whom the state employee maintains a close economic association; and
- the name of any entity doing business in the state of Illinois from which income in excess of \$1,200 was derived by the state employee during the preceding calendar year.

If you have a question about a statement of economic interests, you may seek the advice of your state agency's ethics officer.

Under the terms of Executive Order 15-09, every state employee who is under the governor's jurisdiction and who is required to file the Statement of Economic Interest must file a Supplemental Statement of Interests. The Supplemental Statement is to be filed with the Executive Ethics Commission rather than the Secretary of State. The Supplemental Statement seeks answers to three questions addressing real property leased to the State; non-governmental positions and compensation; and litigation involving the State.

Truthful Oral and Written Statements

"The OEIG also concludes that [the respondents] attempted to and did withdraw funds from their own deferred compensation accounts ... based on false information and ... fraudulent documents..." (OEIG Case #12-02104)

– These are words from a publicly released OEIG investigative report regarding two CTA employees who attempted to withdraw funds from deferred compensation accounts, among other misconduct. The employees both resigned.

It is vital to the integrity of state government that all oral and written statements made by you, in your official capacity as a state employee, be made in what you believe to be an honest and truthful manner. This requirement applies to all means of communications and applies to documents, including, but not limited to:

- time sheets;
- employment or appointment applications;
- statements of economic interests;
- state agency rulings, orders, decisions, findings, etc.; and
- letters, emails, and reports.

Falsification of official documents or untruthful statements made in the conduct of state business are unethical, may violate state policies or law and may subject a state employee to administrative action up to and including fine and/or termination of state employment, and in some instances may result in criminal prosecution.

State Agency Policies

"... [The respondent] improperly authorized or awarded DHS ... benefits to numerous individuals, in violation of multiple DHS policies and procedures related to processing benefits ..." (OEIG Case #08-00494)

– This language is taken from a publicly released OEIG final report. The OEIG found that an employee of the Department of Human Services (DHS) violated multiple DHS policies

by, among other misconduct, using other individuals' LINK benefits cards for unauthorized purposes.

It is important that, as a state employee, you adhere to those applicable laws, rules, policies, or regulations that are unique to your state agency. State agency policies **may** include for example:

- specific time reporting or other personnel-related rules, including, but not limited to, requirements for you to avoid being tardy, strict limitations on your lunch and break periods, and directives to not misuse or abuse state resources by, for example, using state telephones, computers, vehicles, office supplies, or time for other than state business;
- restrictions concerning your solicitation or acceptance of gifts, which may be more stringent than the general gift ban contained within the Ethics Act;
- prohibitions on certain political activities, which may be more restrictive than those prohibitions contained within the Ethics Act;
- rules governing purchasing procedures;
- hiring practices;
- a code of conduct; and
- restrictions concerning conflicts of interest.

Please be aware that many state laws and rules, including the Ethics Act, are applicable to state employees even in instances where their employment is temporary, seasonal, intermittent, or performed under a personal services contract.

It is important that you familiarize yourself with all the laws, rules, and policies which apply to you, and that you abide by them. If necessary, you may ask your supervisor, private legal counsel, agency's legal counsel, or agency's ethics officer for guidance concerning those laws and rules that apply to your employment by the state.

Penalties

Penalties for violations of ethics-related laws, rules, and policies by state employees and appointees depend upon the specific circumstances. Penalties may include disciplinary action up to and including termination of employment or appointment. In addition, the Executive Ethics Commission may levy administrative fines in the case of violations of the Ethics Act. Illegal acts, such as bribery or official misconduct, may result in referrals to the appropriate authorities for criminal prosecution. Penalties for revolving door violations may include assessments of up to three times a former state employee's post-state total annual compensation.

Disciplinary action under the State Officials and Employees Ethics Act against a person subject to the Ethics Act is under the jurisdiction of the Executive Ethics Commission. Any hearing to contest disciplinary action for a violation of the Ethics Act by a person subject to the Personnel Code pursuant to an agreement between the executive inspector general and an ultimate jurisdictional authority will be conducted by the Executive Ethics Commission.

Ethics Questions or Concerns

State employees who have questions or concerns about a work-related ethics issue may contact their agency's ethics officer. Under the Ethics Act, ethics officers, among their other duties, provide guidance to state employees in the interpretation and implementation of the Ethics Act.

Examples of the Ethical Obligations of State Employees

The following are examples of actions or situations concerning the various ethical obligations of state employees, appointees, and officials:

1. **Example:** An employee at a state agency is asked by one of his colleagues to approve a license application that was submitted to the agency by the employee's sister-in-law.

Ethical Assessment: It is a potential conflict of interest for the employee to take an official act that might benefit his sister-in-law. The employee should disclose the potential conflict to his state agency by notifying his supervisor and the agency's ethics officer. To avoid any perception of misconduct, the employee could recuse himself from (not participate in) any decisions related to the sister-in-law's license application.

2. **Example:** A state employee who is assigned a state-owned vehicle takes the car on a family weekend getaway.

Ethical Assessment: State vehicles are to assist state employees getting to and from work assignments. Taking a state vehicle on a personal trip or errand adds "wear and tear" to the vehicle, to say nothing of the added mileage and depreciation. It is improper and a misuse of state property to take a state vehicle on personal trips.

3. **Example:** A state supervisor has directed the agency's human resources director to make changes to a job description for a position to ensure that the son of a friend will meet the requirements.

Ethical Assessment: It is unethical and a conflict of interest for a state employee to attempt to influence another state employee's official actions in order to benefit a family member, friend, or associate.

4. **Example:** A state employee uses his state-provided computer to access pornographic images via the Internet, email, and/or by accessing files on a portable storage device (e.g., a jump drive or portable hard drive), which he has connected to his state computer.

Ethical Assessment: Intentionally using state computers to access non-work related material is in most instances specifically prohibited by state agency policies. Violation of such policies will result in disciplinary action, up to and including, termination of state employment.

5. **Example:** A state employee who is permitted to work from home chooses to conduct business related to her approved secondary employment during hours she has reported as working for the state while at home.

Ethical Assessment: It is unethical and unlawful to provide false information in a time report used as a basis for compensating a state employee.

6. **Example:** A person, helped by a state employee to obtain a state professional license, offers the employee a \$25 gift card as a gesture of appreciation.

Ethical Assessment: An employee should never accept a gift in exchange for an official act. The acceptance of any gift must not violate any law, regulation, or policy, some of which may be more restrictive than the Ethics Act's gift ban. For example, your state agency may have a policy which prohibits your acceptance of any gift related to your job.

7. **Example:** After the end of his state workday, but while still in his state office, a state employee accepts a donation from a coworker for a campaign fund for a candidate for elective office.

Ethical Assessment: The Ethics Act prohibits the intentional solicitation, offer, or acceptance of campaign contributions on state property, at any time. State property means any building or portion thereof, owned or leased exclusively by the state.

8. **Example:** A state employee regularly brings his state-issued laptop computer home to post updates to his personal social media accounts.

Ethical Assessment: It is unethical and most likely a violation of state agency policy to misuse state resources for other than state business. Personal use of a state computer may result in disciplinary action.

9. **Example:** An employee who recently filed a complaint with the Office of Executive Inspector General is transferred to a less desirable job because his state agency has learned of the employee's complaint and believes it may prove embarrassing to the agency.

Ethical Assessment: State law prohibits state officials, employees, appointees, or agencies from taking retaliatory action against a state employee who discloses or threatens to disclose to a supervisor or public body misconduct by a state official, employee, appointee, or agency that the state employee reasonably believes is in violation of a law, rule, or regulation. Among other things, retaliatory action includes changing the terms or conditions of employment of a state employee.

10. **Example:** While making hiring decisions, a state employee ignores his agency's policies to encourage military veterans and instead hires an equally-qualified non-veteran.

Ethical Assessment: Bending or ignoring a state agency's policies, even in those instances where it does not benefit a state employee, family member, friend, or business associate, is improper. Depending on the circumstances, the employee may be subject to disciplinary action or other penalties under the law.



Acknowledgement of Participation in:

2016 Ethics Orientation for State of Illinois Employees

I certify that I have carefully read and reviewed the content of, and completed, the 2016 Ethics Orientation for State of Illinois Employees. Furthermore, I certify that I understand my failure to comply with the laws, rules, policies, and procedures referred to within this training course may result in disciplinary action up to and including termination of state employment/appointment, administrative fines, and possible criminal prosecution, depending on the nature of the violation.

Signature

Printed Name
(first, middle initial, last)

Month and Day of Birth
(for example, July 15)

Date

State Agency Name
(for example, Illinois Department of Transportation)

(To be properly credited for participating in ethics training, please submit this form as directed by your state agency)