

OUTSIDE EMPLOYMENT

No State employee may engage in any outside activity which would interfere with the proper conduct of his or her official duties. This rule applies whether or not the employee receives compensation from the activity and whether or not prior approval of the outside activity is required under either OMH policy or Ethics rules.

What is Outside Employment?

Any personal service activity outside of an employee's Office of Mental Health assignment for which a fee, salary, retainer fee, stipend, or any other consideration of value is received in payment or recognition for services rendered.

What are examples of Outside Employment?

- All privately conducted professional and technical services,
- Teaching and/or lecturing,
- Consulting,
- Paid membership on a corporate board, and
- Any services provided in connection with an academic affiliation.

Who must file for approval of Outside Employment?

- Employees in positions Grade 23 and above,
- Any employee who is overtime ineligible, and,
- Policy-makers, regardless of salary grade or overtime eligibility.

Why are employees required to file for approval of Outside Employment?

Policy and regulations require employees to file for approval of Outside Employment to allow a determination as to whether there is a "conflict of interest" or a "conflict of commitment" between the Outside

Employment and the employee's State duties.

A **conflict of commitment** means the Outside Employment would interfere with the employee's ability to perform the employee's State job during regularly scheduled State work hours.

A **conflict of interest** means the Outside Employment presents the risk that the employee will no longer act out of undivided loyalty to the public interest in doing the employee's State job, but may instead act out of self-interest. Whether or not the employee *actually* will act out of self-interest is not the issue. The risk that the employee's actions *may* be influenced by self-interest creates an *appearance of impropriety* which itself undermines the public's confidence in the conduct of State business and makes the outside activity impermissible.¹

¹ Employees who plan to engage in an outside activity with any entity regulated or licensed by OMH, or which has a business relationship with OMH, must rule out a potential conflict of interest before engaging in the activity. For example, the Commission on Public Integrity has ruled that a Field Office Standards Compliance Analyst cannot also be employed by a mental health program licensed / regulated by OMH, even though the program was not in the employee's assigned county. Also, a researcher may not do private consulting for a company which is sponsoring his or her State research, even if the subject of the outside consulting is completely unrelated to the State project. Ethics issues may also arise if a researcher is doing private consulting for, or has a financial relationship with, a company which provides drugs, devices or other support for his or her research.

When must an employee file for approval of Outside Employment?

Employees **must** apply for and receive approval prior to engaging in Outside Employment. Typically, employees file annually in December for the next calendar year; however, employees must also file any time during the year for any instances of new Outside Employment. Also, if an employee has received prior approval but the employee's State duties or outside activity materially change, the employee must receive new approvals from OMH, and if required, from the Commission on Public Integrity (former Ethics Commission).

How does an employee file for approval of Outside Employment?

- Employees should complete OMH Form 78 ADM, Application for Approval of Outside Employment, and submit it to their supervisor.
- Employees who have been designated Policy-Makers, and whose annual compensation from their Outside Employment will be \$4,000 or higher, must also complete the DOS-1033 form for Commission on Public Integrity approval. Employees who are required to complete the form DOS-1033 must attach a copy of their State duties description and a duties description of the Outside Employment.
- Supervisors should review the forms to ensure completeness and assess whether or not they think there will be a conflict in commitment or a conflict of interest between the Outside Employment and the employee's State duties. Supervisors may elect to approve or disapprove an employee's Outside Employment request. If a supervisor has concerns, he or she may wish to discuss those with the appointing authority or the authority's designee prior to acting on the request. If the supervisor approves the Outside

Employment, he or she should sign the Form 78 ADM and forward it to the attention of the appointing authority or the appointing authority's designee. At that stage of review, the forms will again be reviewed for completeness, and to assess whether there is a conflict of commitment or a conflict of interest, real or apparent, between the employee's duties as a State employee and the outside activity.

- Forms will be returned to the employee if there are errors or omissions to be corrected, or if the outside activity request is being denied due to a conflict of interest or commitment.

If the outside activity is approved, a signed copy will be returned to the employee. If the request requires Commission on Public Integrity approval as well, the appointing authority or designee will forward the form to the Commission for its consideration. In those instances, the activity request is not considered approved until the Commission so determines. NOTE: The Commission on Public Integrity will not approve an outside activity without prior approval from OMH.

Are there any additional requirements for policy-makers?

Yes, policy-makers must obtain Commission on Public Integrity approval (using the DOS-1033) to hold an elected or appointed public office or serve as a director or officer of a profit-making corporation or institution, regardless of whether these activities are paid or uncompensated.

Are there Outside Employment rules governing employees Grade 22 and below (overtime eligible employees)?

- Outside Employment cannot interfere with their duties in their OMH job (i.e., an employee who is directed to work overtime cannot refuse to do so because they are scheduled to work in their Outside Employment job).

- Overtime eligible employees must follow all applicable ethics and policy rules and limitations governing Outside Employment.

Are there still limits on what employees can do if Outside Employment is approved?²

Yes, even with the required approvals, employees engaged in Outside Employment are prohibited from:

- Engaging in activities which present a conflict of interest (or the appearance of impropriety) and/or discredit the State of New York or OMH.
- Selling any goods or services having a value of more than \$25 to any State agency (except by way of competitive bid).
- Contracting or providing any goods or services having a value of more than \$25 to a private entity where the decision to contract, appoint or retain on behalf of the private entity is exercised, directly or indirectly, by a State agency or officer (except by way of competitive bid).

- Using the designation of the State, OMH or any OMH facility in connection with any notice, business card, bulletin, or brochure related to outside employment.

- Selling any goods or services to any entity which is licensed or whose rates are fixed by OMH.
- Engaging in such activities during regular duty hours.
- Using on-duty State employees in the conduct of outside employment.
- Carrying out such activities at any OMH location.
- Using any State-owned facilities or equipment.

² Employees who knowingly and intentionally violate these provisions may be subject to a civil penalty of up to \$40,000 plus restitution of any associated gain.

For questions and additional information, please contact:

- *For facility employees, the facility's designated Ethics Officer.*
- *For Central Office employees, Jason Willis, Agency Labor Relations Representative, Bureau of Central Office Personnel Services, at (518) 474-2413 or Jason.Willis@omh.ny.gov.*
- *For questions related to research, academic issues or relationships with pharmaceutical companies, Robin Goldman in Counsel's Office, at (518) 474-1331, or Robin.Goldman@omh.ny.gov.*