

OFFICE OF GOVERNMENT ETHICS

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**Letter to an Ethics Official
dated June 24, 2004**

This responds to your request dated June 1, 2004, for advice about "whether Federal Government employees are subject to the ethics laws and regulations during furlough periods." You note that your agency employs a number of permanent employees who are guaranteed employment only for between 6 and 11½ months per year. During the balance of the year, they are considered to be on "furlough."

As you have surmised, under the definition of "employee" in the Standards of Ethical Conduct (Standards of Conduct), at 5 C.F.R. § 2635.102(h), an employee on furlough remains subject to the Standards. That provision states that "[s]tatus as an employee is unaffected by pay or leave status" A furlough places an employee in a temporary nonduty, nonpay status; but furloughed employees are not separated from the civil service.¹ Furlough status is akin to "leave without pay," which also is considered a temporary nonduty, nonpay, status.

Likewise, an employee remains subject to the criminal conflict of interest laws at 18 U.S.C. §§ 203, 205, 207, and 209, while on furlough. Two of these statutes, 18 U.S.C. §§ 203 and 205, impose

¹ Our conclusion that the Standards of Conduct continue to apply to employees on furlough is consistent with what the Office of Personnel Management (OPM) has stated in its "Guidance and Information on Furloughs," available on OPM's web site at www.opm.gov/furlough/furlough.htm. That guidance defines furlough as "the placing of an employee in a temporary nonduty, nonpay status because of lack of work or funds, or other nondisciplinary reasons." Under the heading "Employment During Furlough" the OPM guidance states that "[e]ven while on furlough, an individual is an employee of the Government. Therefore, the Standards of Conduct, at 5 C.F.R. Part 2635, which include rules on outside employment, continue to apply to employees on furloughs. Additionally, there are statutes which prohibit certain outside activities. Agencies also have varying supplemental rules regarding the requirement for prior approval of outside employment, and some prohibit certain types of outside employment. Therefore, before engaging in outside employment, employees should review these regulations and then consult their own agency ethics officials to learn whether there are any agency-specific supplemental rules governing them."

restrictions on activities involving the representation of others before the Federal Government by employees.² The statute that prohibits a Federal employee from receiving "any salary, or any contribution to or supplementation of salary" from an outside source as compensation for his Government services, 18 U.S.C. § 209, also applies to employees during furlough periods.

The financial conflict of interest statute, 18 U.S.C. § 208, prohibits an employee from participating personally and substantially in any particular matter that has a direct and predictable effect on his own financial interests, or on the financial interests of others with whom he has certain relationships. As a practical matter, however, this statute will not affect employees during furlough periods because they will not be participating in Government matters during these times. The criminal post-employment statute, 18 U.S.C. § 207, which imposes a number of different restrictions on the representational activities of a former Government employee, would not apply to furloughed employees because they would not be "former employees" while on furlough. Section 207 would apply to them after they have been separated from Government service. Nevertheless, as noted above, 18 U.S.C. §§ 203 and 205 would largely prohibit them from representing others before the Government while they are on furlough.

We hope that this information is helpful to you. Please do not hesitate to contact us if you have additional questions.

Sincerely,

Stuart D. Rick
Deputy General Counsel

² Section 203 prohibits an employee from receiving, agreeing to receive, or soliciting compensation for representational services, rendered either personally or by another, before any court or Federal agency or other specified Federal entity, in connection with any particular matter in which the United States is a party or has a direct and substantial interest. Section 205 prohibits an employee from personally representing anyone before any court or Federal agency or other specified Federal entity, in connection with any particular matter in which the United States is a party or has a direct and substantial interest.