



## The Waiver:

As a NYC employee, there are number of restrictions when it comes to outside jobs and owning businesses:

- ✓ You may not take a second job with a firm that has a contract with the City, or that receives a license, permit, grant, or benefit from the City.
- ✓ You many not own a business that does business with any City agency, nor may your spouse, registered domestic partner, or unemancipated children.

The prohibitions are listed in Chapter 68 of the NYC Charter and in COIB publications such as [Ethics: A Plain Language Guide to Chapter 68](#). There are, however, certain times when activities prohibited by the letter of the law are not prohibited by the spirit of the law. And in these instances, you might be able to proceed with your financial plans, but you will need a waiver from the Conflicts of Interest Board to do so.

Waivers uphold the spirit of the conflicts of interest laws, though the letter of the law might seem to spell out a different course of action.

For example:

You want to work part-time as a consultant for a hi-tech firm that does business with the City, and you are the person responsible for technology in your City agency. By law, you are not allowed to accept the work. In fact, it doesn't matter what you do at your agency, whether you are responsible for technology or not, you may not accept a position at this company.

Another example:

You are a Department of Education teacher and have been offered the opportunity to teach at a nearby private university, but you know that the university does business with the City. Still, you would like to teach there, and you know that your part-time teaching duties, one night per week, would not interfere with your official City duties and responsibilities. Your principal thinks so too. In fact, she likes the idea that a member of her teaching staff lectures at a prominent New York City university.

According to the law, however, this is a violation. Some might say this seems a little unfair. After all, there is only good to be gained for both yourself and the City in your teaching at a university. So why the prohibition?

In fact, the Conflicts of Interest Board may see things the way you do. And the Board can advise how you may legally accept the position at the university without running afoul of Chapter 68 of the City Charter. But the Board has to know what you want to do before it can tell you whether the prohibition can be waived in your particular case.

### **Here is what you have to do to explore the possibility of receiving a waiver:**

Under the law, the Board cannot grant a waiver unless the City employee's agency head approves the request. Therefore, before coming to us for a waiver, you will need to obtain approval from your agency head (not just your supervisor) and in writing. To get approval, you must first speak to your agency's general counsel or personnel officer or call us, and we will tell you how to get the agency head's approval.

With that approval in hand, write us to ask for a waiver. If the waiver is granted, you will then be allowed to engage in an activity that is otherwise prohibited by the letter of the law (Chapter 68). A waiver is granted upon full disclosure of the situation that you want "waived" and a judgment on that information by the Board.

You disclose your situation; the Board deliberates upon it. Then you get a reply. That's it!

If the decision is in your favor, the Board will issue a waiver, in writing, allowing you to accept a job you otherwise could not accept. The more complete the information in your written request, the quicker the Board can send you a written opinion. (If the Board denies the waiver, you may not accept the job.) The Board may grant you a waiver on conditions—for example, you may have to recuse yourself from certain official work.

Your letter to the Board should provide the following information:

- ✓ Who you are and where you currently work (for what City agency).
- ✓ Your official City title.
- ✓ Your responsibilities.
- ✓ Your question, with a description of the situation for which you would like a waiver.
- ✓ The address where we can send you our answer and a daytime telephone number where you can be reached. (If you do not want to be contacted at work, say so in your letter and give us another number or e-mail address where we can get in touch with you.)

Based on the information you provide, the Board makes its decision.

In addition to ruling on your request, the Board will alert you to possible conflicts of interest related to your request. For example, although you may receive clearance to work for a political organization or a not-for-profit, if you are a supervisor you may not ask subordinates to participate in any way in any of your organization's political or charitable activities, even if they favor the political views or the charitable cause. Other common stipulations might be that you do not perform your outside job on City time, or with City resources and that you do not represent your outside job to City agencies,

You should know that the Board is subject to a very strict confidentiality law. But because the Board cannot grant a waiver without written approval from your agency, your agency must know about your request for a waiver. By law, waivers

are public documents, but your request for the waiver is not: it is confidential, even from your agency, unless you waive your right to confidentiality.

For example:

You call the Board to ask whether you can moonlight for a certain firm, and our attorneys inform you that to do so, you will need a waiver. You may, however, decide not to take the job rather than seek approval from your agency, which would require that you inform your agency head. The decision is yours to make. Usually, no one will know that you inquired, except you and the Board.

You should know that there are five kinds of written responses that you may ask for and receive, if applicable, from the Board (a waiver plus four others). You may ask for:

- (1) an attorney staff letter,
- (2) an advisory opinion,
- (3) an order of the Board,
- (4) a Board letter, or
- (5) a waiver.

Each document has a specific purpose. Board staff will tell you which one you need.

1. An attorney staff letter is an informal opinion by a Board staff attorney responding to your written request about the legality or propriety of an activity. There is usually precedent for the advice, so that a routine request may be handled expeditiously at the staff level.
2. An advisory opinion expresses the views of the Board on new questions or novel issues and is intended to provide sound and helpful advice regarding unprecedented or particularly complex situations.
3. An order of the Board permits ownership in a firm that is otherwise prohibited.
4. A Board letter answers your question to us on any relevant matter. It is like a staff letter, but comes from the Board itself.

**And last but far from least, a WAIVER.**

*These materials are intended as a general guide. For more information on the Board or on the conflicts of interest law, call or write the Board.*

**FOR ADDITIONAL INFORMATION, CONTACT**

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**OR VISIT THE BOARD'S WEB SITE AT  
<http://nyc.gov/ethics>**

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