



Understanding Post Employment Restrictions

Note: the amendment to IC 4-2-6-11 applies to former state officers, employees and special state appointees

Q. I am thinking of leaving state government to work for XYZ, Inc., a company that has a contract with my agency. I am currently administering the contract and would like to know if I can accept a position with the company.

A. There are some restrictions on state officers, employees, and special state appointees that apply when leaving state government. IC 4-2-6-11 contains two types of restrictions. They apply to state officers, employees, and special state appointees who leave state government after January 10, 2005.

The first restriction applies to state officers, employees, and special state appointees for one year following termination of state employment. **Please note the first restriction no longer applies to a special state appointee who serves only as a member of an advisory board (IC 4-2-6-11[f]).**

First Restriction: One Year Following Termination IC 4-2-6-11 (b)

A former state officer, employee, or special state appointee may not accept employment or receive compensation:

- (1) as an executive-branch lobbyist (IC 4-2-7-1);
- (2) from an employer if the former state officer, employee, or special state appointee was:
 - (A) engaged in the negotiation or the administration of one (1) or more contracts with that employer on behalf of the state or an agency; and
 - (B) in a position to make a discretionary decision affecting the:
 - (i) outcome of the negotiation; or
 - (ii) nature of the administration; or
- (3) from an employer if the former state officer, employee, or special state appointee made a regulatory or licensing decision that directly applied to the employer or to a parent or subsidiary of the employer; before the elapse of at least three hundred sixty-five (365) days after the date on which the former state officer, employee, or special state appointee ceases to be a state officer, employee, or special state appointee.

The second restriction is a life-time ban regarding a particular matter.

Second Restriction: Lifetime Ban, IC 4-2-6-11 (c)

A former state officer, employee, or special state appointee may not represent or assist a person in a particular matter involving the state if the former state officer, employee, or special state appointee personally and substantially participated in the matter as a state officer, employee, or special state appointee, even if the former state officer, employee, or special state appointee receives no compensation for the representation or assistance.

The term, “particular matter,” is defined below. Check the box below to see if any of the provisions of the definition apply to you.

Particular Matter Defined in IC 4-2-6-11 (a)

- ◆ an application
- ◆ a determination
- ◆ a lawsuit
- ◆ a judicial proceeding
- ◆ a business transaction
- ◆ an enforcement proceeding
- ◆ a license
- ◆ an economic development project
- ◆ a public works project
- ◆ a claim
- ◆ an investigation
- ◆ a contract

The term does not include the proposal or consideration of a legislative matter or the proposal, consideration, adoption, or implementation of a rule or an administrative policy or practice of general application.

What does this mean for you?

You may go to work for the company after one year upon your termination from state employment. However, there are certain matters in which you may not be involved.

Let’s suppose it’s one year after you have left your state agency and company XYZ is interested in hiring you. The company president says she’ll be glad to have someone like you who knows the terms of the state contract which you administered. You would have to inform the president that you would **never** be able to represent or assist company XYZ on the contract you administered as a state employee. In this respect, you are covered by the lifetime (of the contract) ban provision. However, if company XYZ enters into any **new** contracts with the state, you would be able to represent or assist your new employer with those contracts.

Other Provisions of the Post Employment Restriction

(IC 4-2-6-11[d])

A former state officer, employee, or special state appointee may not accept employment or compensation from an employer if the circumstances surrounding the employment or compensation would lead a reasonable person to believe that:

- (1) employment; or
- (2) compensation;

is given or had been offered for the purpose of influencing the former state officer, employee, or special state appointee in the performance of his or her duties or responsibilities while a state officer, an employee, or a special state appointee.

A written advisory opinion issued by the inspector general certifying that:

- (1) employment of;
- (2) representation by; or
- (3) assistance from;

the former state officer, employee, or special state appointee does not violate this section is conclusive proof that a former state officer, employee, or special state appointee is not in violation of this section.



Terms Used in the Post Employment Restriction

“Personally and Substantially”

The restriction applies only to matters for which a former officer or employee participated personally and substantially. The former officer or employee must have worked personally on the matter (not others in the agency working on the matter) and participated substantially in the matter.

Substantial participation includes participating in a decision, an approval, a disapproval, or a recommendation. A former state officer, employee, or special state appointee also participates substantially when she or he gives advice, participates in an investigation, or engages in a substantial exercise of administrative discretion.

“Represent” or “Assist”

The restriction applies to the former state officer, employee, or special state appointee representing or assisting a person on the particular matter.

“Represent” means to attend an agency proceeding, write a letter, or communicate with an employee of an agency.

“Assist” means to help, aid, advise or furnish information to a person. The term also includes offering to do any of these actions.

Be aware, there are other restrictions that apply to employees leaving state government.

Profiteering from public service (IC 35-44-1-7): A person who approves, negotiates, or prepares the terms or specifications of a contract or purchase for their agency shall not knowingly or intentionally obtain a financial interest in that contract or purchase for one year after they separate from employment with their agency. A person who violates this law commits a Class D felony. This section does not apply to negotiations or other activities related to an economic development grant, loan, or loan guarantee.

Compensation as a result of confidential information (IC 4-2-6-6): No former state officer or employee shall accept compensation from any employment, transaction, or investment which was entered into or made as a result of material information of a confidential nature. “Information of a confidential nature” means both confidential information and privileged information that has not been made public.

New Subsections (IC 4-2-6-11)

Subsection (h) identifies those special state appointees who were serving state government when the post employment restrictions became effective in January 2005. Those special state appointees have been granted a window of time in which to resign their positions in state government without being subject to the post employment statute. The window closes on December 31, 2006.

Subsection (g) allows an employee’s or special state appointee’s state officer or appointing authority to waive the application of subsections (b) or (c) in individual cases when consistent with the public interest. The waivers must be in writing and filed with the Ethics Commission.

If you are leaving state government and believe you may have a conflict of interest, it is your responsibility to find out if a conflict exists. You do this by contacting your [ethics officer](#) or the [State Ethics Commission](#). Written advisory opinions on this statute are issued by the State Ethics Commission (IC 4-2-6-11(e)).