

Conflict of Interest Law Education and Training Guidelines

The conflict of interest law requires that all public employees complete education on the law on a regular basis. The education requirements and who must complete them are explained in detail below.

Introduction

Chapter 28 of the Acts of 2009, the ethics reform law, imposes education and training requirements on public employers and public employees. The law authorizes the State Ethics Commission to establish procedures to implement and ensure compliance with these requirements, and these Guidelines are issued pursuant to that authority. The requirements can be summarized as follows: Each year, every state, county, and municipal employee must acknowledge receipt of the summary of the conflict of interest law prepared by the Commission and, every two years, they must complete an online training program prepared by the Commission. Every municipality must designate a liaison to the Commission. All records of compliance with these requirements must be retained for 6 years. These requirements apply to all public employees, as defined by the conflict of interest law and described below, except to the extent that an employing public agency exempts certain categories of employees from these requirements in accordance with the Guidelines set forth below in Sections 2 and 9. These requirements also apply to regional public entities, as discussed below in Section 8. Former public employees are not subject to these requirements.

Questions, Comments and Suggestions

The Commission is committed to working with those affected by the education and training requirements of the conflict of interest law to implement them as efficiently as possible. Questions about these Guidelines may be directed to the Commission's Legal Division by calling (617) 371-9500 or by submitting an advice request form available on the Commission's website, www.mass.gov/ethics. In addition, the Commission invites suggestions for improvements to these procedures. You may email suggestions to EthicsTraining@mass.gov or by calling (617) 371-9500.

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This Index of Topics is intended to help users find the relevant section of these procedures more easily.

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1. WHO IS CONSIDERED A PUBLIC EMPLOYEE?

a. Anyone who holds an office or position with, or provides services to, a public entity, is a public employee.

The statutory definitions of who is a state, county, or municipal employee for purposes of the conflict of interest law are very broad. These definitions are not limited to paid, full-time public employees. Everyone who performs services for, or holds an office or position with, a state, county, or municipal agency is subject to the conflict of interest law. This is true whether the person is paid or unpaid, is a volunteer, works part-time, is employed only for part of the year or on a seasonal basis, or is a "special" employee. The law applies to these individuals, regardless of whether the employee is elected, appointed, or working under a contract.

The conflict of interest law applies to employees of regional entities, including employees of regional school districts and educational collaboratives, regional retirement systems, regional transit authorities, regional planning commissions, regional councils of governments, and independent entities such as water and sewer districts, fire districts, and prudential committees. Employees of regional entities are considered to be employees of each municipality that is a member of, or participates in, the regional entity.

An individual who has a contract with a state, county or municipal agency to provide services to that agency is a public employee for purposes of the conflict of interest law. For example, a professor who contracts with a state agency to serve as an expert witness is a state employee for purposes of the conflict of interest law, and a musician who contracts with a school department to instruct students in trumpet playing is a municipal employee for purposes of the conflict of interest law.

b. Vendors and contractors: Most employees of vendors and contractors which do business with public entities are not public employees, but those who are considered "key employees" under the public contract are public employees.

Public agencies frequently enter into contracts with private companies and corporations. In most cases, the employees of private vendors and contractors that do business with public agencies are not public employees for purposes of the conflict of interest law and are not subject to the education and training requirements that apply to public employees. For example, the employees of a company that delivers art supplies to school departments are not public employees and are not subject to the education and training requirements, and neither are the employees of a bank that provides financial services to various municipalities.

However, in certain limited circumstances, an employee of a private company that contracts with a public agency to perform services may also be a public employee for purposes of the conflict of interest law and must comply with conflict of interest law education and training requirements. If a public agency expressly or impliedly contracts for the personal services of a particular individual employed by a private company, then the particular employee is a "key employee" under the contract and is considered a public employee for purposes of the conflict of interest law. For example, if a public agency hires a real estate consulting firm to provide development services, and the contract specifies that a particular partner will provide those services, then the partner is a public employee. Similarly, if both parties to such a contract intend that a particular partner will provide those services but do not say so expressly in the contract, the partner will be a public employee. By contrast, if a school department contracts with a school bus company to drive its students and the company can assign any of its drivers to do that work, the drivers are not public employees for conflict of interest law purposes. Employees of consultant firms who provide specialized services, such as legal, design, or architectural services, are more likely to be considered "key employees" and therefore public employees, than are the employees of companies that provide goods or non-specialized services. See [Advisory 06-01: Consultants and Attorneys who Provide Services to Government Agencies May be Public Employees Subject to the Conflict of Interest Law](#). Questions about whether employees of a particular company are public employees for purposes of the education and training requirements may be directed to the Commission's Legal Division by calling (617) 371-9500 or by submitting an advice request form available on the Commission's website, www.mass.gov/ethics.

c. Advisory Committee members may be public employees.

Public agencies and officials sometimes seek advice and input on public policy questions from advisory committees. In certain circumstances, advisory committee members are considered public employees, and therefore are subject to the conflict of interest law education and training requirements. If the advisory committee was legally required to be created (such as by a statute, regulation, or ordinance), has formal procedures and work product, and performs functions or tasks expected of governmental employees, its members will be considered public employees. However, if the advisory committee was created by discretionary action, has no formal procedures or work product, and it is expected to represent viewpoints of persons and entities outside of government, then its members will likely not be considered public employees. Questions about whether members of a particular advisory committee are public employees for purposes of the conflict of interest law and the education and training requirements may be directed to the Commission's Legal Division by calling (617) 371-9500 or by submitting an advice request form available on the Commission's website, www.mass.gov/ethics.

2. EXEMPTIONS FROM THE EDUCATION AND TRAINING REQUIREMENTS

Ideally, all public employees in the Commonwealth would be trained on the conflict of interest law. However, cost and other practical circumstances require that a principled way be found to exempt certain categories of public employees from the education and training requirements without compromising the objectives of those requirements. The Commission therefore establishes the following guidelines to enable public employers to determine which of their employees are exempt from the education and training requirements.

Each public employer may use the guidelines below to develop a list of positions for which completion of the education and training is not required. Employers are not required to obtain the Commission's approval of such lists but must maintain such lists as public records and provide them to the Commission on request. If the Commission determines that such a list includes positions which should be subject to the online training program and summary of the conflict of interest law acknowledgment requirements, it may direct that such positions be removed from the list. Questions about whether particular positions should be subject to the education and training requirements may be submitted to the Commission's Legal Division by calling (617) 371-9500 or by submitting an advice request form available on the Commission's website, www.mass.gov/ethics.

a. Public positions for which completion of the summary of the law acknowledgment and online training program are required

- All elected public positions, whether compensated or uncompensated.
- All compensated, full-time public employee and official positions.

- All compensated, part-time public employee and official positions (except for temporary or seasonal employee positions in which employees do not have or exercise governmental authority and do not participate in or have responsibility for government decision-making, contracting, hiring, investigation or any other discretionary governmental action, as set forth below in subsection b).
- Any position, including volunteer positions, whether chosen by election, appointment or otherwise, in which the employee personally serves in or provides services to a public agency, whether paid or unpaid, and participates in or has responsibility for any government decision-making, contracting, hiring, investigation or any other discretionary government action or otherwise has or exercises governmental authority.

b. Positions which may be exempted from the summary of the law acknowledgment and online training program requirements

A public employer may choose to exempt any or all of the following positions from one or both of the education and training requirements:

Unpaid volunteer positions in which employees do not have or exercise governmental authority and do not participate in or have responsibility for government decision-making, contracting, hiring, investigation or any other discretionary governmental action.

Examples:

- Library volunteer positions in which employees re-shelve books or read books to children during a story hour;
- School volunteer positions in which employees come into the schools a few times a year to help with parties and projects, shelve books in the school library, or chaperone field trips and other school events;
- Volunteer positions in which employees pick up litter at parks or beaches, or participate in a town "Clean Up Day;"
- Senior Center or Parks and Recreation volunteer teacher positions;
- Positions in which volunteers assist with an event, such as a town July 4th celebration, by selling tickets, engaging in face painting, or helping clean up the grounds.

Short-term temporary or seasonal compensated positions in which employees do not have or exercise governmental authority and do not participate in or have responsibility for government decision-making, contracting, hiring, investigation or any other discretionary governmental action.

Examples:

- Poll worker positions.
- Non-supervisory seasonal positions, such as, for example, lifeguards and snowplow operators.
- Substitute teachers who work less than one day per week on average.
- Participants in senior citizen tax abatement programs pursuant to General Laws chapter 59, section 5K, and Senior Corps, the Retired and Senior Volunteer Program, Foster Grandparents, Senior Companions, and comparable programs.
- Medical Reserve Corps volunteers.
- High school, college, and graduate school students participating in summer and work-study employment, whether paid or unpaid.
- Participants in programs of the Department of Mental Health, who are patients in a therapeutic program that includes employment.
- Individual vendors and contractors to public agencies who provide one day or less of services per calendar year.
- Participants in volunteer programs whose names are not available or known to any public agency, for example, town residents who help shovel snow or clean up after a flood.

3. PUBLIC AGENCY RESPONSIBILITY TO ADMINISTER CONFLICT OF INTEREST LAW EDUCATION REQUIREMENTS

The law requires public agencies and municipalities to administer conflict of interest law education and training requirements by notifying employees to complete the requirements, including providing periodic reminders and reasonable accommodations. Agencies and municipalities must also maintain the completion records of employees for 6 years.

Employers may, but are not required to, take disciplinary action against employees who fail to complete the education and training requirements as required. Although the employer is not required to affirmatively report any employee who fails to complete the requirements to the Commission, the employer is required to provide such information if so requested by the Commission.

4. PUBLIC EMPLOYEE RESPONSIBILITY TO COMPLETE CONFLICT OF INTEREST LAW REQUIREMENTS

The law places responsibility for acknowledging receipt of the summaries, and for completing the online training program, on the public employees. For an employee who is required to meet the training requirements, a willful failure or refusal to acknowledge receipt of a summary of the

law or to complete the online training program will be considered by the Commission to be a violation of the conflict of interest law and can be the basis of an enforcement action by the Commission against the employee.

5. SUMMARY OF THE CONFLICT OF INTEREST LAW ACKNOWLEDGMENT REQUIREMENT

The Commission has prepared, and will update as necessary, summaries of the conflict of interest law for state, county, and municipal employees, respectively. These summaries are available on the [Commission's online learning management system](#) (LMS) in English, Spanish, Portuguese, simplified and traditional Chinese, and Haitian Creole. All public employees must be provided with a summary of the conflict of interest law and acknowledge receipt of the summary, unless the employing agency has exempted the employee's position from this requirement pursuant to Section 2 above. Public employees who have created a user account in the Commission's LMS, <https://massethicstraining.skillburst.com>, may access and electronically acknowledge receipt of the summary appropriate for their level of government, whether a state, county, or municipal employee. Public agencies opting not to use the Commission's LMS and that instead choose to host the summaries of the conflict of interest law on their own LMS or other training site will be provided with the summaries in a digital format to upload to their LMS or training site so that their employees can download and acknowledge receipt of the summary.

Most employees of private companies that are contractors, vendors, or consultants to a public agency are not required to acknowledge receipt of the summary of the conflict of interest law. An employee of a vendor or contractor is only required to acknowledge receipt of the summary if the individual is a "key employee" under a public contract, as explained in more detail in Section 1(b) above, thereby making the individual a public employee for purposes of the conflict of interest law. Employees of private companies that are contractors, vendors, or consultants to a public agency may access and electronically acknowledge receipt of the summary using the Commission's online LMS at <https://massethicstraining.skillburst.com>. A user account must be created to access the training site. The vendor employee should select the public agency that awarded their company the contract from the public agency list when creating their user account. They can then identify their vendor company in the department field on their profile page.

a. Public agency responsibility for employee compliance with the summary of the conflict of interest law acknowledgment

Each public agency is responsible for notifying employees about the conflict of interest law education and training requirements. Public agencies may opt to use the Commission's LMS, <https://massethicstraining.skillburst.com>, where employees can create user accounts and acknowledge receipt of the summary of the conflict of interest law. Summary acknowledgment records are digitally stored in the system. To use the Commission's LMS, public agencies will need to designate one of its employees to serve as the local administrator to access an

administrative control panel in the system to monitor employee compliance with these requirements. Public agencies who do not use the Commission's LMS can instead host the summaries on their own LMS or training site. The Commission will provide the summaries of the conflict of interest law in the available language translations to public agencies in digital format to load to their own LMS or training site.

b. Compliance deadlines for summaries

Every public employee must acknowledge receipt of the summary of the conflict of interest law within 30 days of becoming a public employee, and annually thereafter. Public agencies should take steps to verify that all current employees acknowledge receipt of the summary each year. Public agencies using the Commission's LMS should notify new employees to create a user account and complete the summary acknowledgment course within 30 days of becoming a public employee. After acknowledging receipt of the summary in the Commission's LMS, the system will track the course completion date and set a new completion due date for the following year. Public agencies not using the Commission's LMS must ensure that their own LMS or training site allows them to monitor employees' course completion status to verify that employees annually acknowledge receipt of the summary of the law.

c. Acknowledgments of receipt

Public employees using the Commission's LMS will acknowledge receipt of the summary electronically. The system will record and digitally store the acknowledgment record and also email the employee a completion certificate. Agencies using the Commission's LMS are not required to maintain separate records of the acknowledgments of receipt.

d. Record-keeping requirements

The acknowledgment of receipt must be maintained as a record of the agency for six years to comply with the conflict of interest law. The Commission's LMS will maintain these records digitally within the system for the required period. The local administrator designated by a public agency to access the LMS's administrative control panel can generate compliance reports evidencing employee compliance with the requirement.

6. ONLINE TRAINING PROGRAM

The online training program is available on the Commission's LMS at <https://massethicstraining.skillburst.com>. Public employees using the Commission's LMS create user account to complete the training program. The program provides information on the requirements of the conflict of interest law, including the requirements for former public employees. All state, county, and municipal employees are required to complete the online training program. . Public employees are required to complete the online training program within 30 days of becoming a public employee and every two years thereafter, unless their employing

agency has exempted them from the requirement pursuant to Section 2 above. Employees of agencies using the Commission's LMS may access the training by creating a user login account on the system using a valid work or personal email address. The local administrator for each public agency or municipality using the Commission's LMS may also create accounts for their employees via the LMS's administrative control panel.

Public agencies that choose not to use the Commission's LMS and instead choose to host the online training program using their own LMS or training site will be provided with the online training program in digital format to upload to their LMS or training site. Public agencies seeking to host the training program can contact the Commission at EthicsTraining@mass.gov to request the program files.

Most employees of private companies that are contractors, vendors, or consultants to a public agency are not required to complete the online training. Employees of vendors and contractors are only subject to the online training program requirement if the individual is a "key employee" under a public contract, which would make the employee a public employee subject to the conflict of interest law. For example, if the public agency expressly or impliedly contracted for that particular individual's personal services, the individual is considered a public employee for purposes of the conflict of interest law and would be required to complete the online training program. On the other hand, if a public agency hires an office cleaning firm and the firm can assign any of its workers to clean the public office, the workers are not considered public employees for purposes of the conflict of interest law and are not required to complete the online training program. Similarly, if a town school department hires a bus company to transport students and the company can assign any of its drivers to do the work, the drivers are not considered public employees and are therefore not required to complete the online training (although school bus drivers employed directly by a town are public employees and will be required to do so). This is explained in more detail in Section 1(b) above.

While we encourage attendance at the Commission's educational seminars, such attendance does not substitute for completing the required online training and does not fulfill the online training requirement.

a. Compliance deadlines for online training

Every state, county, and municipal employee not exempted from the education and training requirements as described above in Section 2 must complete the Commission's online training program once every two years. New employees must complete the online training program within 30 days of becoming such an employee, and once every two years thereafter. Employees of public agencies using the Commission's LMS will use the system to complete the training program. The system tracks the completion status for all employees. After completing the online training program for the first time, all employees will need to again complete the online training program within ninety (90) days before, or ninety (90) days after, the expiration of the two-year

period. After completing the training program, the system will automatically assign the new completion due date. Public agencies can use the Commission's LMS administrative control panel to create messages to automatically email reminder messages to employees of upcoming completion due dates.

If a state, county, or municipal agency establishes a compliance period for employees, they are reminded that all public employees must complete the online training program within the period of ninety (90) days before to ninety (90) days after the two (2) year anniversary date of their last completion date.

Employees can complete the training on work time using a work computer or outside of work hours using a personal computer or on another available computer, for example, at a public library. Employees using the Commission's LMS can also complete the requirements using a mobile device, such as a smartphone or tablet. Any public agency choosing not to use the Commission's LMS must have an alternate hosting solution to host the online training program on its own LMS or training site. The Commission will provide the online training program in digital format for public agencies to upload to their own LMS or training site so that their employees can complete the online training program as required, and the agency can store the completion records as required. Public agencies seeking to host the online training program on their own LMS or training site must agree that the online training program is to be used only for training their own employees, to not share the program files with anyone, and to not alter the program in any significant way such that the program appears on their LMS or training site exactly as it appears on the Commission's LMS. Any public agency wishing to host the online training program on its own LMS or training site can submit a request to EthicsTraining@mass.gov.

b. Record-Keeping Requirements

After completing the online training program public employees using the Commission's LMS will automatically be emailed a certificate of completion. The certificates of completion are also digitally stored in the system. Public employees may choose to maintain these certificates of completion for their own records but are not required to print them or submit them to their employer unless directed to do so. Completion certificates can also be viewed, downloaded, and printed by logging in to the Commission's LMS, <https://massethicstraining.skillburst.com>, and clicking 'Your Certificates' tab at the top right corner of the user dashboard.

c. Public agency responsibility

All public agencies are required to administer employee compliance with conflict of interest law education requirements. Completion records must be maintained for 6 years. Public agencies using the Commission's LMS can use the system to administer the requirements, track employee compliance and digitally store completion records. Public agencies not using the Commission's LMS must ensure that their own LMS or training site can monitor employee compliance and

store completion records. Completion records are public records and must be produced upon request. The Commission's LMS allows local administrators to run reports of employee compliance with the education and training requirements. Those reports are also public records and must be provided upon request.

The Commission is responsible for maintaining completion records for all elected state and county officials. The Commission will maintain completion records for elected officials whose agencies use the Commission's LMS. Elected state and county officials from agencies not using the Commission's LMS must ensure that their agencies can provide course completion records for the elected officials within their agencies to the Commission upon request.

7. DESIGNATION OF MUNICIPAL LIAISONS

The law requires that municipalities designate "a senior level employee of the municipality" as a liaison to the Commission. The Commission will disseminate information to the liaisons and will conduct training for them as needed. Liaisons should be accessible to their municipal employees to provide information about the education and training requirements and to refer employees to the Commission for information about the conflict of interest law. Liaisons should also monitor the Commission's website regularly for updates and be available to the Commission upon request. The Commission may call upon liaisons to provide information about employee compliance with these training and education requirements, and to assist in locating former public employees of their municipalities.

Municipal liaisons may contact the Commission's Legal Division for advice on behalf of fellow employees, but, before doing so, they must obtain permission from the employee to discuss the individual's situation with the Legal Division.

Given the responsibilities of the liaisons, the Commission recommends (but does not require) that municipalities appoint a full-time administrative employee to the position of municipal liaison, or, if the municipality has no such full-time employee, then a part-time administrative employee, since such a person will need to be accessible to municipal employees and situated to perform this role.

Municipalities who use the Commission's LMS must designate a local administrator to access the administrative control panel to administer employee compliance with the education requirements. Local administrators will be considered by the Commission to be municipal liaisons for their municipalities for purposes of the conflict of interest law.

8. REGIONAL PUBLIC AGENCIES

The conflict of interest law education and training requirements apply to all public employees, including employees of regional public agencies, such as regional school districts and educational collaboratives, regional retirement systems, regional transit authorities, regional

planning commissions, regional councils of governments, and independent entities, such as water and sewer districts and fire districts and prudential committees.

When a regional entity is composed of multiple municipalities, or spans the borders of multiple municipalities, then the regional entity is considered an independent municipal agency and is responsible for administering conflict of interest law education requirements for its employees, and for designating a liaison to the Commission. For regional public agencies using the Commission's LMS, the designated local administrator will be considered by the Commission to be the liaison for conflict of interest law purposes. Independent municipal agencies that are not using the Commission's LMS must designate a liaison to the Commission to comply with the conflict of interest law.

9. PUBLIC EMPLOYEES UNABLE TO COMPLY WITH EDUCATION AND TRAINING REQUIREMENTS

The online training program is available in closed captioning in English, Spanish, Portuguese, simplified and traditional Chinese, and Haitian Creole. The summaries of the conflict of interest law are available in those language translations. Some public employees may be unable to comply with the education and training requirements due to language fluency, physical or learning impairments, special needs, or leaves of absence. If a public employee is unable to comply with the education and training requirements because of lack of fluency in or ability to read English or any of the languages in which closed captioning is available, or because of any special needs, the employee may request that their agency or municipality take reasonable steps to convey the information contained in the summary of the law and/or the online training program to the employee in a manner comprehensible to the employee. Employers should provide such accommodations to the extent feasible. If an employer is not able to provide such an accommodation, it may exempt the public employee from complying with the education and training requirements. Employers must maintain records of accommodations provided and exemptions granted pursuant to this section.

Public employees are exempt from complying with the education requirements while on leaves of absence but should comply with these requirements within 30 days of their return from leave.

Date Issued: October 29, 2009

Date Revised and Reissued:

March 18, 2010

November 28, 2011

April 12, 2012

November 30, 2012

October 6, 2014

August 15, 2024