

WASHINGTON STATE UNIVERSITY

UNDERSTANDING ETHICS IN PUBLIC SERVICE

Chapter 42.52 RCW
WAC 292-110
BPPM/Executive Policies

Revised June 2017

WASHINGTON STATE UNIVERSITY

Role of WSU Division, Office of the Attorney General

- Prohibited from providing personal legal advice
- Attorney for the State of Washington & provide advice to WSU
- Provide advisory opinions on state ethics laws and WSU policies



WASHINGTON STATE UNIVERSITY

Overview of the State Ethics Law

- The standards established under the state's ethics law, **RCW 42.52**, are based on **4 key areas**:
- **FIRST:** State employees should not have financial or other interests, or engage in business or professional activities that conflict with the performance of their official duties; **Conflict of Interest.**
- **SECOND:** State officers and employees should not use their state positions to secure special privileges or exemptions for themselves or any other person; **Special Privileges.**

THIRD: State employees should not receive compensation from a source other than the State of Washington for the performance or non-performance of an official duty; **Outside Compensation.**

FOURTH: State employees should not receive a gift if it could be reasonably expected to influence or reward the performance of their official duties.

- Gifts are restricted.



ESSENTIAL RESOURCES

- Executive Ethics Board (EEB) Web Page (www.ethics.wa.gov)
 - Ethics Act and Rules
 - Advisory Opinions
 - Training (On-line quiz)
- BPPM 10.21 ---Summary of Ethics Policies for the University
- BPPM 20.37 ---Personal use of University Resources
- Executive Policy 4 --- Electronic Communication Policy
- Executive Policy 27 ---Ethics & Conflicts of Interest

ENFORCEMENT
How do Ethics Violations Happen?

- From news scandals, we know it includes: corruption, bias, bribery, theft, cronyism, fraud, abuse of office, *quid pro quo*, graft, breach of confidentiality, bid rigging, kickbacks, extortion, malfeasance, profiteering, dishonesty, nepotism, and fraud.
- Even the *appearance of ethical violations* must be avoided.



SANCTIONS AND PENALTIES

- **Fines:** The greater of \$5,000 or three times the benefit
- **Damages sustained by the state plus costs**
- **Disciplinary action up to and including termination**
- Negative publicity and perceptions of the violator, WSU, and the State of Washington

Special Note: Every action taken by the Executive Ethics Board is a public record and published on line.

Personal Responsibility: Responsibility and accountability for the appropriate use of state resources ultimately rests with the individual state employee, or with the state employee who authorizes such work.
WAC 292-110-010(1)

- **In other words: Ignorance of the law won't work.**

Washington State Ethics Law Covers the Following General Areas:

- Use of State Resources
- Gifts
- Conflicts of Interest, Including Outside Employment
- Compensation for Official Duties
- Nepotism & Special Privileges
- Post-State Employment
- Political Activities
- Confidential Information
- Public Records

Use of State Resources
State resources are to be used for the conduct of state business only

- The State's ethics law protects and limits the use of state resources for the conduct of official state business, with only very narrow exceptions as determined by the EEB.
- **State Resources Include:**
 - Equipment, computers, cell phones, cameras, general supplies
 - Office/Conference Rooms and university facilities
 - Vehicles
 - Personnel, co-workers, and work time
 - **THE UNIVERSITY WIRELESS SYSTEM**



De Minimis (minimal) Use Exception

- De Minimis: Use **May** be allowed if the use results in:
 - No Cost to the State
 - Does not Interfere with the performance of official duties, and
 - Is Brief in duration and accumulation
 - WAC 292-110-010
- HOWEVER:** State resources **May Never be used to:**
 - Support an outside business (either profit or nonprofit unless approved by WSU)
 - Private use of state property away from WSU
 - For Commercial Activities (ads, sales, or solicitations)
 - For Political Activities -- Campaigning for/against candidates or initiatives or lobbying
 - Any use prohibited by law or WSU policy

In these situations, the de minimis use exception will not apply.

De Minimis FAQ

- What does “occasional,” “brief,” and “infrequent” really mean?
- While these terms have not been formally defined, the **EEB** has interpreted them to mean just that: so long as there is no disruption to your work or to the work of others.



State Resources & De Minimis Use: Day-to-Day Examples

- Phones:** Landline local calls for reasonable personal business are permitted, i.e. medical & dental appointments, child care, transportation, etc. Long distance must be placed on personal phone.
- Agency Cell Phones:** Generally limited to business purposes but De Minimis will likely apply. (Don't use it as your everyday cellphone.)
 - Note:** Reimbursing costs for use will not mitigate the possible violation.



DAY TO DAY USE OF INTERNET

- Limited personal use of the internet is allowed so long as such use supports organizational effectiveness and does not undermine public trust.
- Computers/Software belong to the state
 - State may access and monitor your office computer/lab top
 - Anything you write, including email, may be subject to a possible public records request.
 - It is acceptable to send brief private emails and forward emails to private computer as long as there is no cost to the state, is brief in duration, and does not interfere with duties. (This likely applies to state issued smart phones)
- DO NOT**
 - Use a state computer to listen to Internet Radio (exceptions may apply)
 - Use a state computer to download music or upload a private play list
 - The safe bet: Don't mix Smart-Phone and work computer

EEB FAQs

- An employee visits several humor and joke sites. While at a site, he downloads a joke file and emails it to several co-workers.
- This is an ethical violation. By emailing a file to co-workers, the employee disrupts other state employees and obligates them to make a personal use of state resources. In addition, downloading files and distributing them to co-workers can damage state property or compromise databases.
- REMEMBER** It can always become a public record!!




Executive Policy 4 Electronic Communication Policy

- Appropriate Use**
 - WSU's IT resources may be used for legitimate WSU purposes only. Appropriate use of IT resources are as follows:

Use by faculty, administrators, and staff directly related to instruction, research, and scholarly, professional, and administrative endeavors on behalf of WSU that are within the scope of WSU employment.

WSU IT resources shall not be used for: Conducting personal activities unrelated to any WSU or student educational purpose.

 - Unless otherwise allowed by this policy...see De Minimis Use.
- What does this all mean?
 - Don't spend all day on ESPN picking a fantasy team
 - Don't read the newspaper all day
 - Do check it during the day to stay on top of things
 - Common sense, professional setting



Social Media Use

- EP 4 Social Media Policy
 - WSU may ask that employees maintain work-related, approved social media accounts or blogs
 - Can be managed and updated during business hours
 - Professional v. Private: Personal networking sites should remain personal and not used for work-related purposes. No university account should be used to maintain personal social network accounts.
- **Protect your WSU.EDU good name**
- **Any communication can become a public record**
- **Someone may be watching**



WSU Executive Ethics Board Case

During the period January 16, 2006 through June 4, 2006, a University Faculty member visited 37 non-work-related websites including humor, news, weather, sports, air travel, shopping, banking and dating sites. Of those 37 websites, 19 were related to dating. Of those 19 websites, 16 were visited by the employee only once. There was no evidence the employee downloaded any files from those websites.

One of the websites did contain pictures of young women in various stages of undress. There was no evidence the employee downloaded any files from that website.

Outcome:

- WSU issued a letter of concern
- EEB sanction: \$750.00 penalty
- Outcome of investigation was made available to the public and local media

Executive Ethics Board UW Case

- Director, UW Office of Student Publications
- UW tracked internet use from 4-26-07 to 6-5-07

Employee performed the following personal uses of state computer:

- Accessed her personal blogs
- Accessed a video site to search for song lyrics
- Continual access to Hotmail account
- Access to shopping sites, such as Amazon

UW Administrative Policy (WSU BPPM/EP) requires that internet use be short in duration, infrequent, no cost to the state, not interfere with employee's performance, and not distract from the conduct of state business.

UW EEB Case Outcome

- UW issued a letter of reprimand
- Received a 2% salary increase compared to UW average 4.5%
- EEB sanction: \$500 civil penalty (\$250 suspended)

Careful, even if the EEB doesn't provide for large sanction, WSU can.

Remember: BPPM's & EP's apply.



RCW 42.52.140 GIFTS

- **RULE:** No state officer or state employee may receive, accept, take, seek or solicit, directly or indirectly, any thing of economic value as a gift or favor from a person if it could be:
 - (1) reasonably expected that the gift or favor would influence the vote, action, or judgment of the officer or employee, or*
 - (2) be considered part of a reward for action or inaction.*



GIFTS, GRATUITIES, & FAVORS

- When neither of these conditions are present, you may accept a gift or gifts up to \$50 in value per calendar year.
- State ethics laws also provide for the acceptance of certain items that are either:
 1. Not included in the definition of "gift"
 2. Items that are gifts but are presumed not to influence unless circumstances indicate otherwise



GIFTS BASICS

- GIFTS DO NOT INCLUDE
 - Items from family & friends with clear purpose not to influence
 - Customary items related to an outside business
 - Items exchanged at social events by coworkers
 - Reasonable expenses for a speech or seminar
 - Discounts available to individuals as a member of a broad-based group. Ex: Discount Mariner tickets for state employees...



GIFTS BASICS

- **\$50 limit does not apply to:**
 - Flowers, plants, and floral arrangements
 - Advertising and promotional items of a nominal value
 - Plaques and awards
 - Items received for professional evaluation
 - Publications related to official duties
 - Food and beverages at hosted receptions
 - Admissions to charitable events
 - Gifts from dignitaries
 - Meals on infrequent occasion if related to official duties





What to do with a gift you can't accept?

- If someone gives you a gift you cannot accept you may, within 30-days:
 - Return it to the sender
 - Donate it to a charity
 - Sometimes a gift may be accepted on behalf of an office or department.
- Make a record (essentially a receipt) of what you did with the gift and hold on to it.

GIFTS, RCW 42.52.150(4)
Section 4 Employees

- **SECTION 4 EMPLOYEES MEET ALL THREE CRITERIA:**
 - Work for an agency that seeks to acquire goods or services
 - Gift-giving person seeks to provide goods or services to the agency
 - Employee participates in those contractual matters with that gift-giving person
 - If your duties include decisions about contracting or purchasing, the Sec. 4 restrictions apply to gifts from any past, current or potential future contactors or vendors



Sec. (4) Employees may NOT Accept Gifts

- If the gift giver has been or could ever be a party in a contracting relationship with you in your official capacity, do not accept the gift.
- There will be few, if any, times when it will be acceptable for you to accept any kind of gift.
- Certain exceptions apply, call AGO if you have a question



Sec. 4 Employees May Accept

- Advertising and promotional items of a nominal value
- Plaques and awards
- Items received for evaluation if not beneficial interest attaches
- Publications related to official duties
- Food and beverages at hosted receptions
- Admission to charitable events
- Items from family and friends
- Customary items related to outside business
- Items exchanged at social events by coworkers
- Items returned or donated to charity within 30 days
- Discounts available to individuals as members of broad-based group

CONFLICTS OF INTEREST

- RCW 42.52.020: No state employee may have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of any nature, that is in conflict with the proper discharge of the state employee's official duties.
- Conflicts boil down to *benefits & bias*.
 - You Cannot:
 - Have direct or indirect financial interest
 - Engage in a business or transaction or professional activity
 - Incur any obligation

↓

With anyone you **regulate or contract with**



CONFLICT OF INTEREST

- *The key questions to consider is that an employee shall not use his or her position with the University to create the opportunity for private gain:*
- Will your private interest benefit as a result of your official action?
- Would a **reasonable person** conclude that a private or personal interest impairs your independent judgment in the exercise of official duties?
- **NO BENEFIT... NO CONFLICT**

However, they are not always easy to spot and can be complex.

- *Determined on a case-by-case basis: Err on the side of caution and ask for advice when you are unsure.*



CONFLICTS OF INTEREST

Questions to ask yourself when evaluating a potential conflict of interest:

1. Will your private interest benefit as a result of your official action?
2. Would a *reasonable person* conclude that a private or personal interest impairs your independent judgment in the exercise of official duties?

**EEB No. 07-014, Dean Knight
UW Law School**

- For a period of six months, Knight used his UW email address to conduct business with State Farm as a member of their board of directors. Knight received or sent communications via UW email system with State Farm 191 times. These emails contained a variety of content including travel arrangements for board meetings, board committee meeting notes, and other information regarding State Farm.
- Fined \$750 by EEB. No longer Dean of UW Law School.

Compensation for Official Duties

- RCW 42.52.110: Not state employee may, directly or indirectly, ask for or give or receive or agree to receive any compensation, gift, reward, or gratuity from a source for performing or omitting or deferring performance of any official duty. (*Certain Higher Ed exceptions apply*).
- No extra or outside compensation for your official duties or for not doing your duties.
- Ex: Working in Accounting, you process credit card payments to the university. A major bank send you a \$50 award for services provided. Can you keep it?



Nepotism & Special Privileges

- A state employee may not use his or her official position to secure special privileges for **himself or herself or any other person**.
- WSU employees may not supervise or participate in employment decisions affecting:
 - Family members
 - Household members
 - Intimate partners
- BPPM 60.14
- Purpose: Minimize conflicts of interests
- Employee has the responsibility to **self-report possible conflicts related to family members**.



Special Privileges

- If you are a supervisor, this means you cannot use your supervisory authority to exempt a subordinate from the ethics law. For example, if a subordinate asks you if they can use email to give and receive client orders for their private business and you say yes, you just gave that person a special privilege or exemption from the Ethics Law.
- You cannot use your position as a state employee to benefit or support an outside business or promote any private commercial enterprise.
- You use your position to obtain goods or services that would not otherwise be available to all employees. (RCW 42.52.070).

**Political Campaigns
Candidates and Initiatives**

- **Basic Rule:** A state employee may *not* use state resources for political campaigns
 - This prohibition applies to *knowing acquiescence*:
A state employee, with authority to direct, control, or influence the actions of another employee, may not knowingly acquiesce in the other employee's use of state resources for a political campaign.



Political Campaign Violations

- **Examples:**

Faculty member sent an email on state provided computer to 30 state representatives regarding employee salaries and retirement plan funding. Ethics Board found violation based on political activity.

Employee sent 8 emails within a week and received 8 emails that dealt with campaign potlucks, brochure drafting, and volunteer support. Although the Board acknowledged de minimis use, still a violation because it is political activity.

Post-State Employment

- Under certain circumstances, WSU employees may be affected by post-state employment restrictions designed to prevent former state employees from personally benefitting as a result of actions and decisions made while serving the public.
- Like other conflicts of interest, a determination of whether post-state employment guidelines could apply to you is made on a case-by-case basis.
- Additional restrictions exist for accepting employment when employment was offered for the purpose of influencing or rewarding the performance of official duties; or when related to the fulfillment of a contract the officer or employee negotiated or administered while in state service.



Confidential Information

- WSU employees are often in positions where they have access to confidential information. If you have access to such information, you may not disclose it, unless provided for by law; or by an agreement between the agency and the person.
- Under no circumstances may the confidential information be used for personal benefit or for the benefit of others. **RCW 42.52.050**
- Examples:** student records, employee records, medical records, certain internal memos
- If you receive a request for a record that may be confidential, contact the AG's office**




Public Records RCW 42.52

- You may receive requests for public records.
- Contact the WSU Office of Procedures, Records and Forms if you receive such a request. They will assist you in responding.
- Ethical Duty under RCW 42.52.050(4):** No state officer or state employee may intentionally conceal a record if the officer or employee knew the record was required to be released under the Public Records Act, was under a personal obligation to release the record, and failed to do so.






Charities and Volunteer Projects

- May state employees use state resources to coordinate statewide volunteer projects or charities?
- **No.** It is likely that coordinating these projects would use state resources beyond those permitted by WAC 292-110-010 and has potential to interfere with the performance of official duties.
- **Why is it not okay to engage in fund raising activities for people and organizations who really need help?**
 - The Ethics in Public Service Act prohibits using state resources for private gain. It is not possible for WSU to support all charitable organizations.

Charities

- Can I sell items from my child's charitable organization such as a school fund-raiser that sell candy or magazines?
- **Maybe.** If the activity falls within "organizational effectiveness." That means that the agency head has approved the activity and encompasses activities that enhance or augment the agency's ability to perform its mission.
- WSU provides a list of approved activities and charities that employees may contribute to. If you want to engage in a charitable activity, ask a supervisor.



SUMMARY

- Accept gifts with caution
- De Minimis personal use of state resources
- Don't use state resources for political campaigns
- Don't accept outside compensation related to your state employment
- Respond appropriately to PRR's
- Avoid financial interest in state transactions you work on
- Plan employment following state service to avoid conflict
- Don't accept any special privilege related to state employment
- Be careful with confidential information



CONTACT INFORMATION

Adam Malcolm
 Assistant Attorney General
 adam.malcolm@wsu.edu
 509-335-2636

WASHINGTON STATE UNIVERSITY 



This has been a WSU Training Videoconference

If you attended this live training session and wish to have your attendance documented in your training history, please notify Human Resource Services within 24 hours of today's date:

hrstraining@wsu.edu
