

# STATE ETHICS COMMISSION

## MANDATORY EDUCATION AND TRAINING REQUIREMENTS

### IMPLEMENTATION PROCEDURES

Issued October 29, 2009

#### INTRODUCTION

Chapter 28 of the Acts of 2009, the recently enacted ethics reform law, imposes new mandatory education and training requirements on public employers and public employees. The law authorizes the Commission to establish procedures to implement and ensure compliance with these requirements, and these Implementation Procedures are issued pursuant to that authority. The new requirements can be summarized as follows:

- Every state, county, and municipal employee must be given a summary of the conflict of interest law prepared by the Ethics Commission and 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 new requirements apply to all public employees, as defined by the conflict of interest law and described below, except that these procedures establish exemptions from the online training requirement for certain categories of employees (see Section 2.a. below). These requirements also apply to regional public entities, as discussed below.

#### QUESTIONS, COMMENTS AND SUGGESTIONS

The Commission is committed to working with those affected by the law to implement it as efficiently as possible. Questions about these procedures may be directed to the Commission's Legal Division by calling (617) 351-9500, or submitted electronically on this website. In addition, the Commission invites suggestions for improvements to these procedures. Such suggestions may be made to David Giannotti, the Commission's Chief of the Public Education and Communications Division at the following e-mail address:

[dgiannotti@eth.state.ma.us](mailto:dgiannotti@eth.state.ma.us)

#### WHO IS CONSIDERED A PUBLIC EMPLOYEE?

The statutory definitions of who is a state, county, and 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.

In certain limited circumstances, an employee of a private firm may also be a public employee for purposes of the conflict of interest law and the new training and education requirements. If a public agency contracts for the personal services of a particular individual employed by a private firm, then the particular employee is 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. 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. (See Advisory 06-01).

## **1. DISTRIBUTION OF SUMMARIES OF THE CONFLICT OF INTEREST LAW**

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 this website. The summaries must be distributed to public employees as described below.

An employee of a private firm that is a contractor, vendor, or consultant to a public agency must be given a summary only if the public agency expressly or impliedly contracted for that particular individual's personal services, thereby making him or her a public employee for purposes of the conflict of interest law. (See Advisory 06-01).

### **a. Responsibility for distribution**

Responsibility for distributing summaries and collecting acknowledgments of receipt is as follows:

- Appointed state and county employees shall be furnished with the summary by, and file an acknowledgment of receipt with, the employee's appointing authority, or his or her designee.
- Elected state and county employees shall be furnished with the summary by, and file an acknowledgment of receipt with, the Commission.
- Municipal employees shall be furnished with the summary by, and file an acknowledgment of receipt with, the city or town clerk.

There are several ways for state and county appointing authorities (or their designees), and city and town clerks, (hereinafter collectively referred to as "employers"), to comply with the requirement that they distribute summaries of the law and maintain acknowledgments of receipt by their employees. The Commission will accept any of the ways set forth below, or a combination of them, as satisfying the requirements of the law.

### **b. Compliance deadlines for summaries**

Every public employee must be provided with a summary of the law within 30 days of becoming such an employee, and annually thereafter. Employers must distribute the summaries by the following deadlines:

- On or before December 28, 2009, and annually thereafter, summaries must be distributed to current state, county, and municipal employees who became such employees on or before November 28, 2009.
- Summaries must be distributed to persons who become state, county, or municipal employees after November 28, 2009, within 30 days of the date on which they commence employment, and annually thereafter. Beginning in 2010, all employers must distribute the summaries to all current employees each year between September 15 and December 15. New employees must receive the summaries within 30 days of the date on which they commence employment and in each subsequent year between September 15 and December 15.

**c. Distribution of summaries**

Summaries may be distributed in paper or electronic format. If summaries are distributed in paper format, they may be distributed as a stand-alone document or included with some other item distributed to employees (such as paychecks), or employees may be required to pick them up at a designated time and place. If summaries are distributed in electronic format, they may be downloaded from this website and emailed to employees. Employers may combine these methods as they find convenient to reach all employees.

**d. Acknowledgments of receipt**

Employees' acknowledgments of receipt of the summary of the law may be accepted and maintained in paper or electronic format. Employees may use the acknowledgment of receipt form included at the end of each summary, or the employer may create its own acknowledgment form. Alternatively, employers may maintain a logbook for acknowledgments of receipt and require employees to sign it. Employers may scan paper acknowledgment forms and maintain them electronically for purposes of complying with the conflict of interest law.

If an employer distributes the summary electronically, a return email from the employee will satisfy the statutory requirement of a written acknowledgment of receipt. If an employer distributes the summary electronically to employees using the employees' work email accounts, the employer can request "read receipts" for its emails to employees, and the "read receipts" will satisfy the statutory requirement of a written acknowledgment of receipt. Electronic acknowledgments of receipt may be maintained electronically.

Employers need not choose one of these methods, but may combine methods as they find convenient to reach all employees. Whatever method or methods the employer adopts, the acknowledgments must be maintained in such a manner so as to be readily accessible if requested by the Commission. In particular, state and county appointing authorities (or their designees), and city and town clerks, must maintain records of acknowledgments in a manner that would permit them to comply with requests by the Commission for production of the acknowledgment forms of specific employees and notification of the names of employees who have not complied.

Each employee must provide to his or her employer, as defined herein, an acknowledgment of receipt within ten (10) business days of receipt of the summary.

**e. Record-keeping requirements**

State and county appointing authorities (or their designees), and city and town clerks, must maintain an annual list of all employees to whom summaries are distributed during that calendar year, and such list must indicate as to each listed employee whether the employee provided an acknowledgment of receipt. In addition to the annual list, the acknowledgment of receipt itself must be maintained as a record of the agency. Both the annual lists and the acknowledgments of receipt must be maintained for six years.

## **2. ONLINE TRAINING**

The Commission currently has on its website an online training program that provides a general introduction to the conflict of interest law, including information on the requirements of the law that apply to former public employees. (This program is geared primarily to state employees, but will be updated in the future to be more relevant to all levels of government.) All state, county, and municipal employees must complete the online training program that is currently on the Commission's website within 30 days of becoming a public employee, and then once every two years afterwards. The Commission is currently working to revise the current program and create additional online training programs, as appropriate. Public employees must provide a certificate of completion to their employers, as defined herein, and the employers must retain such certificates for six years (see subparagraph d. below). A public employee who completes the training currently on the Commission's website will not be required to take a new online training program until the next two year period.

An employee of a private firm that is a contractor, vendor, or consultant to a public agency must complete the online training only if the public agency expressly or impliedly contracted for that particular individual's personal services, thereby making him or her a public employee for purposes of the conflict of interest law. For instance, 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. Similarly, if a town hires a bus company to drive its students and the company can assign any of its drivers to do the work, the drivers are not required to complete the training (although school bus drivers employed directly by a town will be required to do so). (See Advisory 06-01).

While we encourage attendance at the Commission's seminars, such attendance is not a substitute for participating in the required online training and does not fulfill the online training requirement.

There are several ways for public employees to comply with the online training requirement and for their employers to comply with the requirement that they maintain certificates of completion. The Commission will accept any of the ways set forth below, or a combination of them, as satisfying the requirements of the law.

### **a. Exemptions from the online training requirement**

Ideally, all public employees in the Commonwealth would be trained in 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 mandatory online training requirements without compromising the objectives of the statutory training requirement. The Commission therefore establishes the following guidelines to enable public employers to determine which of their employees are exempt from the online training requirement.

Each public employer may use the guidelines below to develop a list of positions for which online 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 requirement, it may direct that such positions be removed from the list. Questions about whether particular positions should be subject to the online training requirement may be submitted to the Commission's Legal Division.

**i. Positions for Which Online Training Is 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 ii).
- 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.

**ii. Positions Exempted from the Online Training Requirement**

*Note: Employees in these positions must still be given summaries of the law.*

- 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 reshelve 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 "police" 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
- 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.

#### **b. Compliance deadlines for online training**

Every state, county, and municipal employee not exempted from training as described above 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. Public employees must comply with this requirement by the following deadlines:

- All persons who were state, county, or municipal employees as of September 29, 2009, and continue to be so employed, and all persons who become state, county, or municipal employees between September 29, 2009 and March 3, 2010, must complete the Commission's online training, and provide certificates of completion to their employers, as defined herein, on or before April 2, 2010.
- All persons who become state, county, or municipal employees on or after March 3, 2010, must complete the Commission's online training program, and provide certificates of completion to their employers, within 30 days of the date on which they commence employment.
- After April 2, 2010, each continuously employed employee must complete the online training program and provide a certificate of completion within ninety (90) days before, or ninety (90) days after, the two (2) year anniversary date of their last online training completion date. Such certificates of completion must be provided by state and county employees to their respective appointing authorities (or designees), and by municipal employees to their respective city and town clerks. New employees must complete such training within 30 days of the date on which they commence employment and once every two years thereafter, in accordance with the timeframe set forth above.

#### **c. Completing online training**

Employees can complete the training on work time and on their work computers. If authorized by their employers, employees can also complete the training on their home computers.

Employers can organize group online training sessions. The designated municipal liaison or his or her designee shall supervise municipal group online training sessions.

The appointing authority of a state or county agency or his or her designee shall supervise state and county group online training sessions. Group sessions may use the online training program from the Commission's website, so long as the group format is set up so as to ensure that every employee knows the correct answer to every question by the end of the training. Employers who organize group sessions should print the on-line training completion certificate and distribute it to employees, and collect the filled out on-line training completion certificates. Alternatively, the municipal liaison or other person supervising the group training can fill out a certificate of completion for all participating employees, and he or she should sign and date the form.

Employers need not choose only one of these methods, but can combine methods as they find convenient to reach all employees. The Commission also invites employers to propose other means of achieving compliance; if approved by the Commission, these alternative means will also satisfy the online training requirement.

#### **d. Certificates of completion of the online training requirement**

Each employee who completes the on-line training should print out the certificate of completion showing that he or she has done so, and give it to his or her employer, as follows:

- Appointed state and county employees shall file the certificate of completion with the employee's appointing authority, or his or her designee.
- Elected state and county employees shall file the certificate of completion with the Ethics Commission.
- Municipal employees shall file the certificate of completion with the city or town clerk.
- Employees of regional entities that include more than one municipality shall file proof of compliance with the regional entity.

An employer may authorize its employees to save the certificate of completion electronically and email it to a designated employee for filing. Employers may maintain certificates of completion received electronically in electronic form.

Employers may use any of the methods for compliance described above as they find convenient to reach all employees. Whatever method or methods the employer adopts, the certificates of completion must be maintained in such a manner so as to be readily accessible for review if requested by the Commission. In particular, state and county appointing authorities (or their designees), and city and town clerks, must maintain certificates of completion in a manner that would permit them to comply with requests by the Commission for production of the certificates of specific employees and notification of the names of employees who have not complied.

#### **e. Record-keeping requirements**

State and county appointing authorities (or their designees), and city and town clerks, must maintain a list of all employees who are required to complete the online training program, and such list must indicate as to each listed employee whether the employee provided a certificate of completion. In addition to the list, the certificate of completion itself must be maintained as a record of the agency. Both the lists and the certificates of completion must be maintained for six years.

### **3. DESIGNATION OF MUNICIPAL LIAISONS**

The law requires municipalities to 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 educational seminars for them. To the extent feasible and practicable, liaisons are encouraged to maintain up-to-date lists of email addresses of public employees in their municipalities. Liaisons will also be required to be accessible to public employees in their municipalities and to check the Commission's website regularly for updates. The Commission may call upon liaisons to provide information about their towns' compliance with these training and education requirements, and to assist in locating former public employees of their municipalities.

Given the responsibilities that will be required 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 so as to be able to carry out these duties.

#### **4. REGIONAL ENTITIES**

The requirements of the ethics reform law apply to all public employees, including employees of regional entities such as regional school districts and regional councils of governments, and independent entities such as water and sewer districts and fire districts and prudential committees.

When an independent entity such as a water and sewer district is contained entirely within a municipality, the city or town clerk is responsible for complying with the requirements concerning summaries and on-line training.

When a regional entity is composed of multiple municipalities, or spans the borders of multiple municipalities, then the regional entity is itself responsible for complying with the requirements concerning summaries and on-line training, and for designating a liaison to the Commission.

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