COMPREHENSIVE ETHICS TRAINING COURSE

For State Officers and Employees
Subject to Financial Disclosure Requirements

TRAINER NOTES

October 4, 2019
Disclaimer

Although the name says it’s comprehensive, it’s not exhaustive. It is a general overview of the ethics laws that may apply to you.

(Review slide)

Your agency may have more restrictive ethics policies than the state ethics laws we will review today. This is one reason why it’s a good idea to seek advice from your agency’s Ethics Officer.

Our website is a great resource for more complete information.

Segue: What is the purpose of ethics training?...

Purpose of Ethics Training

(Review slide)

Our objectives are:

1) Awareness - What the law says, and what regulations may apply
2) Prevention - Training is designed to prevent conflicts of interest
3) Compliance - Training is required by law, and promotes trust in State officers and employees
We will cover the following topics: (Review slide)

Segue: Let’s begin...

Let’s begin by giving a brief overview of what the Ethics Commission is and the role it plays in State ethics...

In 2007, the former State Ethics Commission combined with the former Lobbying Commission to form the Commission on Public Integrity. In 2011, JCOPE was established by PIRA which greatly expanded its jurisdiction. Now the jurisdiction includes state employees, legislature, some political party chairs, as well as lobbyists.

Segue: This combined the core functions of both prior commissions...
Although JCOPE is often described as a “watchdog” agency, investigation & enforcement is only one of its core functions. JCOPE also serves an important advisory function for the regulated community. The key functions of the commission are:
(review slide)
Segue: Let’s take a brief look at these functions...

A prime part of our mission is to provide advice & guidance. JCOPE is here to provide help on the ethics laws.
Segue: Let’s look at that first.

One of the primary functions of JCOPE is to offer advice and guidance to the regulated communities under its jurisdiction. There is an “Attorney of the Day” program that offers free, confidential guidance on State ethics laws. Your agency Ethics Officer is also a primary source of advice and guidance for you. We want to make sure you have the information you need, so contact your Ethics Officer or JCOPE for assistance.
Segue: If you call JCOPE attorneys, you will be able to get a legal advisory opinion on your situation...
There are two types of advisory opinions: Most of the time, you will receive an informal opinion that deals with a narrow, specific set of circumstances. They are confidential, and issued by the Commission’s staff attorneys based on prior precedent. JCOPE provides confidential guidance by phone and e-mail.

If your situation is unique, it may require a formal advisory opinion to address your circumstances. A formal advisory opinion is issued by the Commissioners on matters of first impression. These opinions are public documents, with identifying information redacted. Every formal advisory opinion is posted on the Commission’s website. These opinions set precedent for others in the future.

Segue: Let’s look at the core functions JCOPE is best known for...

JCOPE also has responsibility for investigations & enforcement.

Segue: Let’s talk about that next...
If JCOPE is considering beginning an investigation, the subject will receive notice and an opportunity to respond. The notice is a confidential document that contains information regarding the alleged violations of law. After evidence is gathered, a confidential hearing is conducted, presided over by an independent hearing officer. The hearing officer makes his/her findings and recommendations to the Commission for final determination. Failure to answer or appear will not prevent JCOPE from proceeding with an investigation or enforcement. All communications and records related to the investigation are confidential, unless and until JCOPE issues a Substantial Basis Investigation Report.

What You Need to Know

While we hope you never find yourself in this situation, your rights are preserved under the investigatory process:

• If you are going to be investigated, you will be notified. There are no secret investigations.
• Investigations are private matters unless/until the commission can substantiate a finding.
• Investigations are only made public after the commission rules there is a substantial basis to conclude that a violation has occurred.

Segue: To avoid this outcome, there is an ethics training requirement...

This is one of the commission’s core functions.
The reason you’re here today is because of the ethics training requirement contained in Executive Law § 94. The law specifies that this course be a live session, and you have to take it within 2 years of becoming an FDS filer. Some of you may have previously taken the OEO, the only ethics class allowed to be in an online format, but this CETC course is your primary training obligation. After completing this class today, you will need to attend refresher training every three years, as long as you remain an FDS filer. You may either retake this course, or take a course called the Ethics Seminar, to satisfy that refresher requirement.

Segue: JCOPE’s final core function is oversight through financial disclosure. Let’s look at that next.

Segue: One aspect of ethics laws that you all have in common is the requirement to file annual financial disclosure statements.
Financial Disclosure

The Financial Disclosure Statement (FDS) is a publicly available record containing financial and professional information about the FDS filer and the filer’s spouse.

The purpose of the FDS is to:

• provide transparency
• prevent conflicts of interest between a person’s professional duties and private financial interests and affiliations.

Let’s take a brief overview of financial disclosure statements.

(Review slide)

Segue: Who is required to file?

Who is Required to File?

Officers, members, directors, and employees of any State agency, board, commission, council, public authority, public benefit corporation, or legislative employees who are:

- Designated as Policymakers (state employees who have an annual salary in excess of the filing threshold)
- Threshold Filers (state employees who have an annual salary in excess of the filing threshold)
- Political/Party Chairpersons as defined in POL § 73(k)
- The four Statewide Elected Officials, Legislators, and candidates for those offices
- Elected officials & candidates
- Some Political Party Chairs

You’re in good company. Approximately 30k people in NYS are designated as FDS filers. They are:

- Policymakers designated by agency (including unpaid/per diem members of boards, councils, and commissions)
- Employees who exceed an income threshold > CSEA Salary Grade 24, called Threshold Filers ($97,448 as of 4/1/18)
- Elected officials & candidates
- Some Political Party Chairs

Segue: What do you have to report on your FDS?

What is Disclosed?

- Offices or any positions of authority held in a business entity or organization, political party, or political organization
- Ownership or professional affiliation with any business entity
- Ownership and income from financial interests, investments, securities, real property, and other assets
- Debts, liens, mortgages, and other financial obligations
- Certain gifts, honoraria, and other payments

Basically, all the many ways we obligate ourselves financially. Since the purpose of the FDS is transparency in order to avoid conflicts of interest, the form asks for many details of your finances.

The FDS provides transparency regarding how your connections with the private sector may create conflicts of interest with your public service.

(Review slide)

Segue: When you have to file depends on your filing status...
May 15th
Statewide elected officials, State officers, political party chairs, policymakers, and State employees with an annual salary rate in excess of the job rate of a CSEA equivalent SG-24.

November 15th
Academic employees at the SUNY and CUNY who meet the filing threshold requirements. Generally, academic employees are professors at the SUNY and CUNY campuses.

Individuals who qualify for filing after May 15th have 30 days to file.

Segue: Because FDS are public documents, this sometimes raises privacy concerns.

Although FDS are public documents, they are not posted online, and are only accessible by specific request. Generally speaking, the only FDS forms requested are by the media in response to a public figure being accused of breaking the public trust.

Segue: There are other means to keep your personal information private...

An FDS filer can make a request to:
- Get an extension for filing – request must be made by filing deadline.
- Redact specific information from the FDS copy made publicly available.
- Seek a limited exemption for some questions regarding a spouse or minor child.
- Threshold Filers can request an exemption, but policymakers may not.

Segue: It’s important to file your FDS in a timely manner. There are consequences if you don’t...
What If I Don’t File on Time?

If you fail to file your FDS, or if you fail to file a deficient FDS by either not answering a question or failing to respond to a question with the required specificity, JCOPE will notify you.

If you fail to respond, JCOPE will send you and your appointing authority a Notice of Delinquency that advises you of fines and penalties.

Notices of Delinquency are made publicly available on the JCOPE website.

If you still fail to file your FDS, you may be subject to a civil penalty of up to $40,000 after a hearing, or criminal prosecution.

If you have any questions or difficulties filing your FDS before the deadline, please contact JCOPE for assistance.

(Review slide)

Once notified, you then have 15 days to comply or correct your filing. Otherwise, a Notice of Delinquency (NOD) is issued and made public.

Segue: Any questions about Financial Disclosure Statements?

THE CODE OF ETHICS

Public Officers Law § 74

This is one of the most important laws we will cover today. It forms the foundation of the ethics laws and focuses on helping you navigate through potential ethical pitfalls.

This will help you identify and address potential conflicts of interest.

We will talk about:
• guiding principles
• to whom it applies
• standards of conduct, with examples

Segue: Let’s get started.

What is the Code of Ethics?

The Code of Ethics…
• is intended to prevent you from using your official position or authority to benefit yourself or someone else
• addresses actual conflicts of interest, as well as the appearance of a conflict, when performing your State duties

The Code of Ethics embodies the guiding principles of:

Impartiality
Confidentiality
Stewardship of State Resources
Integrity

The Code of Ethics will help you address conflicts of interest when performing your State duties.

Whenever we think of professional conduct in State service, we always refer to the code of ethics and ask if a potential conflict of interest exists, especially with respect to areas of concern such as gifts, honoraria, and outside activities.

(Review slide)

Segue: Who is subject to the Code of Ethics?
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The Code of Ethics applies to all officers and employees of New York State, including:
- Legislative members and employees
- Officers and employees of any State agency, department, division, board, commission, or any public benefit corporation or public authority, including unpaid and per diem officers and members
- Officers or employees of specific “closely affiliated corporations,” listed here.

Segue: Let’s look at what the law actually says...

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New York State officers and employees, members of the Legislature or legislative employees shall not...

*“have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his (or her) duties in the public interest.”*

Segue: Beside losing the public trust, violations of the Code of Ethics carry penalties...

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Violations of the Standards of Conduct may result in a civil penalty of up to $10,000 and the value of any gift, compensation, or benefit received as a result of the violation.

In addition to civil penalties, each agency is empowered to impose disciplinary actions, which may include fines, wage garnishment, or termination.

Segue: Let’s look at the nine standards of conduct...
Segue: The 9 Standards of Conduct embody the rules of ethical behavior in the workplace...

Our first standard focuses on the guiding principle of impartiality and independence of judgment when performing your state job. 

(Review example) 
ASK: So what do we think? Can you accept the job? 
No. Even though the new position is for a different project, accepting the job would create the appearance of a conflict of interest between your duties as a State employee and your private financial interests by accepting a paycheck from a vendor you oversee.

Segue: The next standards relate to confidentiality...
Standard B really focuses on the guiding principle of **confidentiality** and knowing what you can and cannot disclose with respect to your State job. This varies by agency – it’s important for you to know what’s considered confidential in your job. *(Review slide)*

Segue: The next standard also relates to confidentiality...

Standard C expands the scope of confidentiality; preventing you from disclosing or using confidential info to further your own interests or for your personal benefit. *(Review Example)* In this example, the manager violates Standard C by disclosing confidential information.

Segue: Let’s look at the next standard...

Standard D is about not receiving unwarranted or undeserved privileges or using State resources for your own private business or other compensated non-governmental uses. *(Review example)*

Answer: No. You may not use State resources for your own side business, even if you do it after hours, and even if you bring your own paper and ink. You would still be using State equipment and office space to further your own private business interests.

Segue: Let’s look at the next standard...
Standard E focuses on your financial conflicts of interest and making sure your private financial interests don’t conflict with your public service. *(Read example)*

Here you can see that your spouse’s job may create the impression that you might be unduly influenced in the procurement process.

Segue: Let’s look at the next standard...

Standard G focuses on your personal investments and making sure they don’t conflict with your public job. You can’t invest based on any “insider” knowledge you may acquire in your State service, and you can’t share this confidential information with others so they can profit from your insider knowledge. *(Read example)*

Don’t invest where you have inside professional knowledge and interest. Here, recusal isn’t enough of a remedy.

Segue: Let’s look at the next standard...

“Standard I” says that your private business interests may not intersect with entities that are licensed or regulated by your state agency. In other words, you can’t contract for work with a business you regulate. *(Review example)*

If you think there might be a conflict, ask.

Segue: The last two standards lie at the heart of the code of ethics...
Standard F & H are sometimes referred to as the “Integrity Standards” and they set the public “optics test” for professional behavior. The two standards do not carry a monetary or civil penalty; however you could still face disciplinary action from your agency.

Standard F really focuses more on professional behavior... *(Read Standard F)*
So don’t act like you can be influenced. If it looks like you could be improperly influenced, that’s enough to violate this standard.

Standard H again features the public optics test. *(Read Standard H)* Don’t act in ways that give the appearance of misconduct. If it might look suspicious, don’t do it.

Segue: Our professional conduct directly contributes to the integrity of State service...

We all play a role in improving the culture of ethics in NYS government. Remember, public service is a public trust, and we must all do our share to uphold the integrity of that service.

Today’s training is an important element in educating yourself about the ethics laws you are expected to uphold. Whenever you have questions about how the ethics laws may impact you, please reach out to your Ethics Officer or JCOPE for help.

And if you see misconduct occurring, report it.

Segue: Let’s leave the Code of Ethics and look at the next set of ethics laws...
This statute covers many of the specific restrictions on professional behaviors that the ethics law addresses.

Segue: The first thing to know is this part of the law applies to a slightly smaller universe of people.

POL 73 applies to everyone except unpaid or per diem officers (these are usually members of boards, councils, and commissions), but remember, the Code of Ethics (POL 74) still does apply to them.

Segue: Let’s look at the kind of restrictions that are found in this section...

Segue: The first restriction relates to limits placed on “Outside Activities...
Slide 41

**What is Considered an Outside Activity?**

Generally, an outside activity is any interest or activity that is unrelated to your State employment.

Outside activities may not:
1. occur during your regular work hours
2. use State resources
3. conflict with your State job and official duties

*POL § 73* and the *JCOPE regulation Title 19 NYCRR Part 932 (“Part 932”) contain rules for policymakers on pursuing an outside activity.

The General Rule about participating in outside employment or similar activities is to look at it from both *POL 73 & 74*. It can’t violate the restrictions in 73, but it also can’t give the appearance of a conflict of interest, benefit, or preferential treatment under *POL 74*. You should seek advice before engaging in outside activities.

Segue: The specific regulations that guide outside activities are found in Part 932...

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**Subject Areas of the Law and Applicable Regulation**

<table>
<thead>
<tr>
<th>POL § 73</th>
<th>Part 932</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>What the law says</em></td>
<td><em>What the regulation says</em></td>
</tr>
<tr>
<td>Applies broadly to all State officers and employees</td>
<td>Applies to FDS filers designated as policymakers for required approvals</td>
</tr>
<tr>
<td>Restrictions on selling goods or services to the State</td>
<td>Restricts participation in certain political activities</td>
</tr>
<tr>
<td>Prohibits State employees from engaging in lobbying activities</td>
<td>Requires a yearly notification to the agency Ethics Officer on continued Outside Activities</td>
</tr>
</tbody>
</table>

*POL 73* places restrictions on some professional activities; the regulations in *Title 19 NYCRR Part 932 (“Part 932”) clarify and expand those restrictions. *(Review slide)*

Your Outside Activity can’t be in conflict with your State responsibilities, so your Ethics Officer must approve it in advance. You must also annually notify your EO that you are still engaged in that activity.

Segue: Let’s look at the approval process...

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**Who Approves Outside Activities for Policymakers?**

- **Annual compensation between $1,000 and $5,000**
  - Requires agency approval
- **Annual compensation greater than $5,000**
  - Requires agency approval, and
  - Complete the *JCOPE Outside Activity Approval Form* and submit to *JCOPE* for final approval

Activities that also require *JCOPE* approval for policymakers:
- Serving as a director or officer of a for-profit corporation or institution, regardless of compensation
- Holding other public office (elected or appointed), regardless of compensation

*Title 19 NYCRR Part 932*

Who approves your outside activity depends on what it is and how much you expect to earn. If your activity will earn (or you expect it to earn) greater than these threshold amounts, you need approval. *(Review slide)*

Agency approval usually happens through the Ethics Officer, but can be others.

Segue: There are also restrictions on holding certain kinds of political positions...
Restrictions on Political Outside Activities

Policymakers, including those in an unpaid or per diem position, are prohibited from serving as:

- an officer of any political party or political organization; and
- a member of any political party committee. For example, serving as a political party district leader or a member of the national committee of a political party.

Segue: Public Officers Law also prohibits other kinds of activities...

Prohibition on Working on Legislation

You cannot receive payment in any form to perform an outside activity that involves working on any proposed or pending bill or resolution in the Senate or Assembly.

In essence, you can't be paid to perform the work of a lobbyist. (i.e., attempting to promote or oppose the passage of bills or resolutions by either house.)

Segue: another restriction relates to doing business with the State...

Selling Goods and Services to the State

If you have a private business as an approved outside activity and you would like to provide goods or services to the State valued at more than $25, you can do so as long as you follow the State's open competitive bidding procurement process.

You can't sell goods/services >$25 to any State agency without the competitive bidding process.

These rules prevent preferential treatment because you're a State employee, when doing business with other State agencies. This applies to all employees, not just “policymakers”.

Segue: Let's take a look at an example of an employee who violated the rules on outside activities...
Employee Misconduct: Outside Activity

A senior director of the MTA also had an outside home repair business. The employee used:
- his subordinates to prepare invoices and estimates, and
- agency resources and equipment to engage in his home repair business.

The employee failed to:
- seek approval for his outside activity regarding his home repair business, and
- disclose his outside income and outside activity in his annual FDS.

Fined $4,000

Employee Misconduct: Outside Activity

(Review example)

Not only did he violate the rules on Outside Activities, but he also violated the Code of Ethics by misusing State resources, and violated the financial disclosure rules as well.

Segue: There are some specific restrictions on certain types of professional activities that may not be done as an outside activity...

Restricted Outside Activities for Compensation

As a State employee, you can’t be paid to provide services in relation to any of these examples of outside professional activities...

(Review slide)

Segue: The next restriction relates to a topic many understand – nepotism...

Nepotism Restrictions

Segue: Let’s look at how the statute handles this.
Nepotism is showing favoritism in the workplace to family members.

Did you know:
- Anyone living in your household is considered a relative for purposes of the nepotism restrictions.
- You are banned from participating in any decision to hire, promote, discipline or discharge close relatives.
- You may not financially benefit a close relative by awarding contracts or investing public funds.

Inform your supervisor or Ethics Officer if you are asked to be involved in personnel decisions for anyone you may know. Let your Ethics Officer make the determination of whether recusal is appropriate.

Segue: Let’s look at an example of how the nepotism rules have been violated in the past...

Employee Misconduct: Nepotism

A Corrections employee wanted to secure his nephew a job.

The employee:
• supervised his subordinate during the interview process, and
• directly took part in selecting his nephew over another candidate.

Fined $1,500

(Review example)

This employee took a direct role in getting his relative hired, by remaining an active supervisor of the person conducting the interviews and by taking direct a role in selecting his nephew for the job.

Segue: Let’s turn to another restriction that people often get confused about...
This is an area where there is sometimes some confusion about what is allowable and what is not. First: many agencies have gift rules that are more restrictive than those outlined in the POL 73. Many agencies have a zero-tolerance policy on the acceptance of gifts. Check with your Ethics Officer for the gift rules that apply to you.

Segue: We’ll review what the law says, and then offer some hypothetical case scenarios to help you see how it might look.

The gift provisions in POL 73 require us to analyze whether acceptance of a gift might create a conflict of interest. We will first define what qualifies as a “gift,” then we will review the things that are excluded from that definition. It’s important to know who is offering the gift, so we must look at them as a potential “interested source”. This will help us determine if the gift represents a conflict of interest and, therefore, is unable to be accepted.

Segue: So let’s first define “gift”...
Slide 54

**What is a “Gift?”**

$< 15 ≠

General Rule: Anything valued less than $15 is normally not considered a gift, as long as accepting the item or service doesn’t create the appearance of a conflict of interest.

Segue: Now that we know what a gift is, let’s review the things that are NOT considered gifts...

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Slide 55

**Gift Exclusions - Items**

- Awards or plaques in recognition of public service
- Honorary degrees
- Promotional items with no resale value
- Discounts available to the general public
- Gifts from those with whom there is a demonstrated familial or personal relationship
- Contributions reportable under the Election Law (e.g., campaign donations)
- Meals and beverages provided to participants at professional and educational programs
- Local travel payments for tours related to your State job
- Food or beverage valued at $15 or less per event

Segue: Some things you may accept, as long as it doesn’t create the appearance of a conflict of interest. These are not considered gifts:

(Review slide)

Segue: There are a couple of additional gift exclusions that relate to events...

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Slide 56

**Gift Exclusions – Events**

Travel, food, and lodging expenses for speakers at Informational Events

- Applies only when a governmental entity or in-state accredited institution of higher learning is paying the expenses or reimbursing you.

Complimentary attendance, including food and beverage, at a:

- bona fide charitable event — event’s primary purpose must be to provide financial support to an organization that is either registered as a charity with the Attorney General’s Office (unless exempt) or qualified under section 501(c)(3) of the Internal Revenue Code
- bona fide political event — event’s primary purpose must be to provide financial support to a political organization or a candidate for state-wide office.

Segue: Certain events are also excluded from the Gift rules.

(Review slide)

Segue: One other gift/event exclusion is a common scenario called the “Widely Attended Event”...

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Trainer Notes: 10/4/2019
You might be able to accept free admission to a “Widely Attended Event” if it meets the following conditions: (Review slide)

The first 2 criteria help prevent an interested source from creating an event specifically to target you or your agency. The third criteria is official-specific, rather than event-specific - the event must be related to your official duties. Example of a ceremonial function might be throwing out the first pitch in a baseball game. Give your Ethics Officer plenty of advance notice so they can thoroughly vet this event prior to your attendance.

Parameters of Exclusion:
- Food and beverage is only permissible if offered to all participants
- The WAE exclusion does not cover entertainment, recreational, or sporting activity unless the presentation addressing the public interest or concern is delivered during the entertainment, recreational, or sporting activity

Segue: We need to review the concept of “Interested Source”...

An interested source is a person or entity that has a vested interest in you or your agency. An interested source can be any of the following: (Review bullets)

Generally, you cannot accept a gift from an Interested Source.

Segue: Now that we know what is and isn’t a gift, and who is an Interested Source, we can conduct the gift analysis...
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Gifts: Step-by-Step Analysis

When deciding if it is allowable to accept a gift, consider the following questions:

(Review slide)

Segue: There are other gift considerations as well...

Slide 60

Conflicts of Interest and Gifts

(Review Slide)

There are a number of factors that need to be considered before accepting gifts, so when in doubt, seek guidance.

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Think Like an Ethics Officer

Ethics Officers need to consider many different factors before giving you guidance. Let’s practice that skill by applying the gift analysis to some hypothetical scenarios:

Ask yourself: Is the item or service valued at $15 or less, or does it fall into one of the gift exclusions? If not, is the gift from an Interested Source?

For each of the following situations, we’re going to look at the totality of the circumstances and examine what other factors we need to consider before accepting these gifts.
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I have been invited to a luncheon by an Interested Source and the value of the meal is $25.

If I pay $10 towards the price of the meal, may I accept the invitation?

What factors need to be considered?

• The total value of the meal – the meal is more than $15
• From an Interested Source – not allowable

Answer: No. This meal may not be accepted. The total value is not reduced by paying a portion of the expense.

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A lobbyist, Leo, went to high school with David, an employee of the Department of Environmental Conservation (DEC).

Leo regularly has matters before the DEC. Leo sends David a $50 bottle of wine as a Christmas gift.

Can David accept the gift?

What factors need to be considered?

• David’s status in agency – is he a policymaker or involved in decisions on the topic of lobbying?
• What is their relationship? – just because they went to HS together doesn’t mean they’re friends.
• Do they normally exchange gifts? If they’ve been exchanging gifts for years, it might be okay.
• Is Leo lobbying David? – This would definitely rule out the gift.
• Is Leo claiming this as a business expense? – This indicates that it is a cost of business, not a gift of friendship.

Answer: It depends. The answer to these questions will determine if a potential conflict of interest is present that would make accepting the gift impermissible.
Let’s try an analysis using the “Widely Attended Event” rules.

**Review example**

What factors need to be considered?

- Is the invitation from the event sponsor?

**Answer:** No. Staples is the sponsor, not Xerox. The invitation must be from event sponsor, not from a corporate stakeholder at event.

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Let’s assume Staples, the sponsor, issued the invitation.

What other factors need to be considered?

- Have 25 individuals, who are not from your agency, invited to attend?

**Answer:** Yes, more than 25 non-agency people are invited to attend.

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As part of your official duties, you research and evaluate new software products for your agency. Your colleague Janet has her own desktop publishing business and was also invited to attend.

**Can you and Janet both attend?**

**Review slide**

What factors need to be considered?

- Does this relate to your official duties?

**Answer:** Maybe. You may attend because the event is directly related to your official duties, but we don’t know what Janet’s official duties are. If this event does not relate to her State job, she may still attend if she does so on her own time, and her attendance does not create the appearance of a conflict of interest.
Staples has provided food and beverage for all participants of the conference. Xerox has set up a hospitality suite as a thank you for all their current customers. Since your agency has a current contract with Xerox, you are invited to attend the hospitality suite. May you accept the offer?

What factors need to be considered?
- Are food & beverages offered to all participants?
- Is this from an Interested Source? - not allowable

Answer: No. While you may enjoy the food and beverages that are served to all participants, you may not accept the invitation to an exclusive perk that other participants do not receive.

Staples offers a complimentary round of golf at a local country club at the conclusion of the conference.

Can you attend?

What factors need to be considered?
- Is there a presentation addressing the public interest or concern being delivered during the entertainment, recreational, or sporting activity?

Answer: No. Unless the public interest is addressed during the recreational event, these kinds of perks are not permissible.

Segue: Some final thoughts on the acceptance of gifts...

Things to Consider: Gifts
1. Am I being offered a gift by someone who has business before my agency?
2. Is the gift being offered as a reward for doing my job?
3. Is the gift being offered to influence me as a State employee?
4. If I accept this gift, could a member of the public perceive a possible conflict of interest?
5. How would this look if someone wrote a news story about this?
6. Does my agency have stricter gift restrictions?

(Review slide)
Check with your Ethics Officer about agency policies on gifts that may apply to you.

Segue: Our next topic relates to the acceptance of Honoraria...
These regulations were amended June, 2014.

HONORARIUM
19 NYCRR Part 930

An honorarium is a payment or other compensation offered in exchange for a professional service or activity, such as giving a speech, writing an article, or serving on a panel and a seminar or conference, that is not part of the State person's official duties.

An honorarium may include expenses incurred for travel, lodging, and meals related to the service performed.

Segue: Here's what you need to know before performing the service...

- You must request written approval from your agency's Ethics Officer or designee prior to performing service giving rise to payment of the honorarium.
- Any honorarium in excess of $1,000 is reported on your FDS.
- Faculty members of SUNY and CUNY and State officers and employees with specific titles are exempt from the approval procedures for receipt of Honoraria.
- Statewide Elected Officials and Civil Dept Heads cannot accept an honorarium for any speech.
- Agencies must keep all Honoraria approvals for three years and make them available to JCOPE upon request.

Requests for approval must be made in advance to give the Ethics Officer time to review the activity for potential conflicts of interest between the outside organization and your agency that you may be unaware of. Because faculty are often expected to perform honorarium-generating tasks as part of their professional responsibilities, they are exempt from the approval procedures. Giving speeches is a part of the duties for Statewide Elected Officials and Civil Dept heads, so they may not accept payment for speeches.

Segue: Let's look at the factors that must be considered before your honorarium-generating activity can be approved...
**Restrictions When Performing an Honoraria**

- You cannot use State personnel, equipment, or time to prepare the honorarium-generating activity.
- No State funds can be used to pay your attendance, registration, travel, lodging, or meal expenses.
- If the service is to be performed during the official work day, you must charge vacation or personal leave.
- If the honorarium is offered by or on behalf of an Interested Source, it can’t be used to either reward or influence you in performing your State job duties.
- The acceptance of an honorarium cannot violate the conflict of interest rules found in Public Officers Law § 74.

There are several factors to consider when seeking approval for Honoraria. *(Review Slide)*

Note: You might need to do a gift analysis as well.

Segue: A related provision considers travel reimbursements...

**Official Activity Expense Payments**

Comparable to Honoraria are the Official Activity Expense Payments, formerly known as “travel reimbursements.”

**What is an Official Activity Expense Payment?**

Generally, an official activity expense payment is a travel reimbursement that is offered to you for an activity that is part of, and related to, your State job.

All requests to approve an official activity expense payment must be made to your Ethics Officer or appointing authority in advance.

Certain kinds of reimbursements for work-related travel are allowed, but must be requested in writing and approved in advance. *(review slide)*

Segue: There are things to consider to determine if you may accept payments for activity expenses. You have to follow the same type of situational analysis as when considering gifts.
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What You Need to Know

➢ Mode of travel and related expenses must align with your agency’s current travel policy
➢ Payment or reimbursement from an “Interested Source” is generally not allowed
➢ You must report any travel reimbursements over $1,000 from each source on your FDS
➢ Agencies must retain all Official Activity Approvals for three years and make them available to JCOPE upon request.

(Review Slide)

1st bullet: you can’t accept a first-class ticket for doing your job – follow agency travel policy.
If third party pays directly, these payments are not reportable on the FDS.

Any questions on these kinds of expense payments?

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EMPLOYMENT RESTRICTIONS IN STATE SERVICE

Now we will look at some of the employment restrictions on State employees, which include the reverse two-year bar, negotiation of future employment, and post-employment restrictions.

Segue: Let’s start with the restriction on new employees...

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REVERSE TWO-YEAR BAR

Other Applications of § 74

These first two employment restrictions arise from applications of POL § 74, which include the reverse two-year bar and negotiation of future employment.

Segue: Let’s first explain what the two-year bar is...
Slide 79

(Review Slide)
This affects former private sector employees who are entering State service.
You may be required to recuse yourself from matters involving your former private sector employee for a “cooling off period” of two years.
Its purpose is to prevent you from giving preferential treatment to or be unduly influenced by your former private sector employer.
More information can be found in advisory opinions 98-09 and 07-04.
Segue: There are other considerations when you leave State service...

Slide 80

Another application of 74 is the Negotiation of Future Employment, and involves restrictions that apply to both solicited and unsolicited job offers.

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(Review 2 conditions)
Segue: An important responsibility is to notify your agency when you are pursuing this kind of employment opportunity...

As a State officer or employee, there are restrictions on if and when you may negotiate future employment with an entity or individual that has a specific matter pending before you.
If you receive an unsolicited job offer, or if you are interested in soliciting an employment opportunity, you may only pursue an employment opportunity after waiting 30 days from:
1. The date the matter before you closed; or
2. The date on which you notified your supervisor and Ethics Officer of your intent to pursue a job offer and recused yourself from the matter and any further contact with the entity or individual.
Unsolicited and Solicited Job Offers

**Duty to Notify**
You have a duty to promptly notify your supervisor and Ethics Officer if you receive an unsolicited job offer or if you intend to solicit a job offer from an entity or individual that has a specific matter pending before you.

**Potential Violations**
Depending on the circumstances, failure to follow these requirements for solicited and unsolicited job offers could result in a violation of Public Officers Law § 74 of the Code of Ethics and/or the gift restrictions found in Public Officers Law § 73(5). Also, it’s possible that the offer was intended to influence you or an agency decision. You may not be aware that the company has privately offered jobs to other members of your team, but if you are all disclosing those offers, the EO may see a pattern you do not.

Segue: So let’s look at the post-employment restrictions that are in POL 73...
What is the Purpose?
The post-employment or "revolving door" restrictions prevent you from leveraging the knowledge, contacts, and relationships gained throughout your career in State service and profiting on that insider knowledge in the private sector.

There are two types of bars: the Two-Year Bar and the Lifetime Bar.

The two-year bar applies to all State employees subject to POL § 73; the lifetime bar is determined on a case-by-case basis.

The first thing to remember is the importance of consulting with your Ethics Officer or JCOPE prior to accepting a private-sector position that may involve official actions you took as a State employee or officer. These restrictions are designed to prevent a former employee from personally benefitting in the private sector from the insider knowledge they gained as a public servant. After you leave State service, you can't have an undue advantage in professional matters before your former agency.

Segue: These restrictions are on everyone, not just FDS filers...

To Whom Does it Apply?

• Post-employment restrictions apply to all State officers and employees subject to Public Officers Law § 73.

• The post-employment restrictions apply to part-time and seasonal employees. These restrictions apply equally to a one-day or thirty-year hire.

Note: Students and interns are generally not considered State employees for the purposes of the post-employment restrictions, but there are some exceptions.

These post-employment restrictions apply to all employees regardless of how long they worked for the State – applies equally to one-day hires and lifetime employees – and regardless of whether or not we must file an FDS.

Segue: We'll look at the two-year bar first...

Two-Year Bar Restrictions

The two-year bar creates a "cooling off" period to prevent the appearance that you could unduly influence your former agency.

The two-year bar contains two restrictions - the “Appear or Practice” restriction and the “Backroom Services” restriction - both of which apply for two years immediately following your separation from State service.

It does not ban all contact with your former agency.

These restrictions are aimed at preventing a former State employee from:
- influencing a decision of, or action by, their former agency, or
- gaining information from the agency that is generally not available to the public.

(Review slide)

Segue: Let's take a look at the “Appear or Practice” prohibition...
The Two-Year Bar – Appear or Practice

**Appearance/Practice Prohibition**
You may not _appear or practice_ before your former agency for two years following your separation from State service. This prohibition applies to both paid and unpaid work.

Some examples of prohibited appearances or practices are:
- negotiating a contract with a former agency
- submitting a grant proposal or application to a former agency
- representing a client in an audit before a former agency

Segue: since these restrictions are very situational, let’s look at some additional examples...

Two-Year Bar – Appear or Practice

Additional examples that would violate the “Appear or Practice” restrictions:
- having your name appear on any document submitted to your former agency when the document submission involves influencing a decision of, or action by, your former agency
- engaging in settlement discussions with your former agency
- calling your former agency for guidance on how it might apply a future regulation or application, where generally your former agency would not provide such information to the public

Segue: There is also a “Backroom Services Prohibition”...

Two-Year Bar – Backroom Services

You are prohibited from being paid to perform certain services on behalf of a client that are related to a matter before your former agency that advances its mission, even if those activities do not involve directly appearing or practicing before your former agency.

This prohibition applies only to paid work. There is no prohibition on performing backroom services for no compensation.

Segue: Let’s look at some examples of what this might look like...
Slide 90

Two-Year Bar – Backroom Services

Some examples of prohibited Backroom Services include:

- Preparing certain documents for a private firm when it is reasonably foreseeable that the documents will be reviewed by your former agency.
- Assisting another person in the creation or development of an application to be submitted to your former agency.
- Assisting another person in the creation or development of a plan or strategy for influencing a decision of your former agency.

(Review examples)

In these examples, we can see that you’re not directly interacting with your former agency, but your private sector firm is still using your insider knowledge to gain an advantage over the general public.

Segue: There is a special set of restrictions for Executive Chamber employees...

NOTE: document submission that would advance the firm’s mission (18-01)

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Special Two-Year Bar for Executive Chamber Employees

Former Executive Chamber employees are prohibited from appearing or practicing - regardless of compensation - before all State agencies, not just the Executive Chamber.

They may, however, perform backroom services for compensation to State agencies other than the Executive Chamber.

Are there any Executive Chamber employees here today?

(If not, skip. If so, review slide)

Segue: The next employment restriction is the Lifetime bar...

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The Lifetime Bar

“No person who has served as a state officer or employee shall after the termination of such service or employment appear, practice, communicate or otherwise render services before any state agency or receive compensation for any such services rendered by such former officer or employee on behalf of any person, firm, corporation or other entity in relation to any case, proceeding, application or transaction with respect to which such person was directly concerned and in which he or she personally participated during the period of his or her service or employment, or which was under his or her active consideration.”

(Review Slide)

Once you leave State service, you may never appear, practice, or render services before any state agency in relation to any matter you personally participated in.

This bar is very narrowly applied and specific to the circumstances, so you will want guidance to determine if it applies in your case.

Segue: Let’s look at this a bit closer...
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What You Need to Know...

If you participated in a specific case, proceeding, application or transaction while in State service:
1) If the same matter is before any New York State agency, you cannot ever participate, regardless of compensation.
2) If the same matter is not before a New York State agency, you may perform services on the same matter provided you receive no compensation.

The Lifetime Bar is extremely fact-specific. If you have any questions regarding the application of this bar to your professional circumstances, please contact JCOPE for a confidential assessment.

(Review Slide)

For example, while working at DEC, you helped conduct an environmental impact study for a proposed housing project. The Div. of Homes & Community Renewal will conduct a review of the completed project. After you leave State service, you join the construction co. that built it, and the completed project goes to HCR for review. You might be Lifetime Barred from participating in the review of that project for the construction company. However, you may be allowed to volunteer your expertise for an environmental group that is trying to conserve wetlands on the property.

Segue: There are many factors that the Commission will consider in determining the Lifetime Bar...

Slide 94

What You Need to Know...

The Commission will examine a non-exhaustive list of factors in considering whether it is the same specific case, proceeding, application or transaction, including:
1) the general nature of the project;
2) the phases of the project involved;
3) the nature of the work performed as a State employee and the nature of the work projected to be performed;
4) the extent to which the projected work constitutes a continuation of the earlier work;
5) the identities of other persons and/or entities directly involved in the earlier work and in the projected work; and
6) intervening changes in design, methods, or technology.

(Review Slide)

These are new factors to consider from Advisory Opinion 18-01.

Segue: There are some exceptions to these post-employment restrictions...
The post-employment restrictions do not apply in the following situations:

(Review Slide)

- If you leave State service but move to another gov’t position, you’re still serving the public, and these employment restrictions do not apply.
- If you are a health care professional, you can continue to care for the patients that had been in your care as a State employee.
- You’re not prevented from returning to your former agency if there is a specific matter for which your agency requires your expertise.

Remember, if you have any questions regarding how these employment restrictions may apply to your particular set of circumstances, please consult your agency Ethics Officer or a JCOPE attorney.

Segue: Let’s talk about what we need to do to keep politics out of State service...

This is a new regulation as of July 2014, and has a very narrow application.
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The purpose of the regulation is to promote Public Service Announcements, while discouraging their use as campaign tools for elective office.

The PSA regulations prohibit the following individuals from appearing in a PSA within 90 days of any election:

➢ Governor
➢ Lieutenant Governor
➢ Comptroller
➢ Attorney General
➢ Members of the New York State Legislature (either house)
➢ Any head and/or executive director of a State Agency

Violations can result in a $10,000 civil penalty and the value of the benefit received.

Segue: There is another section of the law that specifically addresses politics in the State workplace...

Slide 98

"LITTLE HATCH ACT"

CIVIL SERVICE LAW § 107

The Little Hatch Act addresses political activity in State service, and puts rules in place about what can and cannot be done at work. It is modeled on the Federal "Hatch Act" which also seeks to prevent politics in the workplace.

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Political Activity in the Workplace

The term "political activity" means doing something in active support of or opposition to a political party, a candidate for partisan political office (e.g., President, senator, representative, state or local legislature or office), or a partisan political group.

The State workplace should remain nonpartisan. Keep your personal political activities and opinions separate from your professional life.

The Little Hatch Act is designed to prevent political activity in the workplace. (Review slide)

Segue: Let’s look at what is prohibited...
You may not be questioned, directly or indirectly, about your political affiliation as a condition of employment or position. State offices may not be used for soliciting or collecting any political contributions. You cannot use your State position or authority to influence employees for any political purpose. You cannot dishonestly use or attempt to use your official authority or influence in exchange for political action on someone else’s part.

Segue: Let’s look at a few examples...

Here are some real-work examples that have been found to be in violation of the Little Hatch Act.

• No nominating petitions in the office – outside the workplace on personal time is allowed
• You can’t use State resources to produce any political materials
• You can’t use State email for political communications, even to friends you know support your candidate
• If you receive a political communication to your work email address in error, delete it and contact the candidate to give them your personal email address. Even forwarding a political email to your personal address is a violation because you have used the State’s internet connections to distribute political materials.

Segue: The penalties for violations of this Act are significant...
Civil Penalty Amounts
Violations of the following sections of law provide for a civil penalty of up to $40,000 and the value of any gift, compensation or benefit received:
• § 73(4) Selling good or services to State agencies
• § 73(5) Gifts
• § 73(7) Rendering services before State agencies
• § 73(8)(a) Post-employment Restrictions
• § 73(14) and § 73(15) Nepotism
• Civil Service Law § 107

(Review Slide)
The penalties can be substantial, so seek guidance from your Ethics Officer or JCOPE if you have any questions about these aspects of the Public Officer’s Law.
Segue: Here’s how to reach out...

JCOPE Contact Information
For General Inquiries, call: 1-800-87-ETHICS or (518) 408-3976
For Legal Guidance email us at: legal@jcope.ny.gov
For Questions on Training email us at: education@jcope.ny.gov

One of the central missions of JCOPE is to provide guidance on matters of State ethics. The purpose of this training was to give you greater awareness of your obligations under the Ethics laws, but if you have any questions, please contact our office.