

UNIVERSITY OF CALIFORNIA

OFFICE OF THE GENERAL COUNSEL

Leaving the University – Post-Employment & Revolving Door Guidance (October 2023)

By Mark T. Morodomi, David Zonana, Principal Counsel Governance

Leaving the University Post-Employment & Revolving Door Guidance

Table of Contents

Summary of Post-Employment Rules	p. 1
Background	p. 2
1. Before You Leave the University: Influencing Prospective Employment	p. 3
2. One Year Ban on Representing Other Parties	p. 5
3. Permanent Ban on Switching Sides	p. 8
4. Public Contract Code -- Additional Restrictions on Providing Goods or Services to the University	p. 11

Summary of the Post-Employment Rules:

Rules Applying to All Employees and University Officials:

1. Before You Leave the University: Influencing Prospective Employment. While you are still employed by the University, you must recuse yourself from making, participating in making, or influencing a University decision that directly relates to a prospective employer. Having a job interview, discussing an offer of employment, negotiating an offer of employment, or accepting an offer of employment can trigger this rule. See page 3.
 2. One Year Ban on Representing Other Parties Before the University. You are barred for one year after leaving the University from appearing before or communicating with your campus while representing another person, in an attempt to influence certain University proceedings if you are being paid to do so. (UCOP employees may have further restrictions.) See page 5.
 3. Permanent Ban on “Switching Sides” in Cases or Proceedings. You are permanently barred from working for compensation on the other side of a “proceeding” that you participated in while working for the University. You cannot represent another person or aid another person. See page 8.
- 3(a). Public Contract Code - Restrictions on Providing Goods or Services to the University. You are barred for two years from entering into a contract with the University to provide goods or services, if you engaged in any negotiations, planning, arrangements, or any part of the decision-making process related to the contract while still employed by the University. *Note: retirees are generally exempt from this ban and may nonetheless be hired back by the University.* See page 11.
- 3(b). Public Contract Code - Restrictions on Providing Goods or Services to the University. You are barred for 12 months after leaving the University from entering into a contract with the University department you formerly worked for, if you were employed by that department in a policymaking position in the same general subject area as the proposed contract. *Note: retirees are generally exempt from this ban and may nonetheless be hired back by the University.* See page 11.

NOTE: University of California – Policy BFB-BUS-43 Purchases of Goods and Services; Supply Chain Management, pp. 5, 6, 36, 37 implement the above-mentioned Public Contract Code requirements. <https://policy.ucop.edu/doc/3220485/BFB-BUS-43>

Background

State law, including the California Political Reform Act (“the PRA”), contains various conflict of interest provisions that apply to public employees.

This Guidance addresses the PRA’s requirements affecting *former* (or soon-to-be-former) public employees. In addition, this Guidance addresses provisions in the California Public Contracting Code restricting former employees from entering into contracts with the University to provide goods or services, under certain circumstances.

Specifically, this Guidance discusses the following four rules:

1. Before You Leave the University: Influencing Prospective Employment;
2. One-Year Ban on Representing Other Parties Before the University;
3. Permanent Ban on "Switching Sides" in Cases or Proceedings; and
4. Public Contract Code - Restrictions on Contracts to Provide Goods or Services

Additional Resources

If you have questions about this Guidance or any of the post-employment restrictions (or any other conflict of interest issues), you may contact the Office of the General Counsel, or your campus Conflict of Interest Coordinator, listed here:

<http://ucop.edu/ogc/coi/coord.html>

Further guidance from the California Fair Political Practices Commission may be found here: https://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Public%20Officials%20and%20Employees/Leaving_State_Employment.pdf.

1. Before You Leave the University: Influencing Prospective Employment

The Political Reform Act prohibits:

1. A University official or employee
2. from making, participating in making, or influencing a University decision
3. that directly relates
4. to a prospective employer.

(Government Code section 87407; Reg. 18747.)

An employee has a disqualifying interest in a company that may be their future employer, even before he or she has left University employment.

Q&A on the Influencing Prospective Employment Rule

Q: Who should comply with rule?

A: All University employees and Regents.

Q: What activities can trigger this prohibition?

A: If the official or employee is "negotiating" or "has an arrangement" concerning prospective employment, the official may have avoided any participation in University actions concerning that prospective employer. Submitting a résumé or an application to a prospective employer will not alone trigger this law. However, the following contacts with a prospective employer can trigger application of the statute:

- An interview with a prospective employer or its agent.
- Discussing an offer of employment with a prospective employer or its agent.
- Accepting an offer of employment.

Q: If I am "negotiating" or "have an arrangement" with a prospective employer, what can't I do?

A: You may not make, participate in making or influence University decisions that "directly relate" to a prospective employer. This means you must recuse yourself entirely from such decisions. A decision "directly relates" to a prospective employer if:

- The prospective employer, either directly or by an agent, has initiated a proceeding in which a decision will be made by filing an application, claim, appeal, or similar request;
- The prospective employer, either directly or by an agent, is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official's agency (for example, if the University decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or similar matter regarding to the prospective employer); or
- The prospective employer will be financially affected by the University decision you are working on. Whether the prospective employer will be financially affected is sometimes not obvious. Contact Office of the General Counsel for assistance.

Q: What if I don't know what the financial effect of the decision on my potential employer will be?

A: You should try to obtain that information from your prospective employer. You must make a good faith determination of the potential financial effect of the decision on your prospective employer.

Q: Do any exceptions apply?

A: The prohibition on making a decision directly related to your prospective employer does not apply if any of the following is true:

- Your prospective employer is a state, local, or federal governmental agency.
- You are legally required to make or participate in the making of the governmental decision (this is extremely rare – seek advice from the Office of the General Counsel if you believe this applies to you).
- The governmental decision will affect the prospective employer in substantially the same manner as it will affect a "significant segment" of the public generally.

2. One-Year Ban on Representing Other Parties Before the University

Certain former employees will be banned for one year from interacting with the University regardless of whether they were previously involved in any of the specific proceedings at issue. Specifically, the Political Reform Act prohibits:

1. People designated in the University's Conflict of Interest Code, Regents, and any other University employees who participate in making University decisions that could foreseeably affect their financial interests,
 2. for one year after leaving the University,
 3. from representing any other person (i.e. not themselves)
 4. by appearing before or communicating with the University,
 5. for compensation,
 6. in an attempt to influence agency decisions that involve the making of general rules such as regulations or legislation (this may include Regent's policies), or
 7. to influence certain proceedings involving a permit, license, contract, or a transaction involving the sale or purchase of property or goods.
- (Section 87406; Regs. 18746.1 and 18746.2.)

Q&A on the One-Year Ban on Representing Other Parties

Q: Who should comply with this rule?

A: The following individuals:

- University employees, officers, and consultants who make or participate in making governmental decisions, including either:

(1) employees designated in the University's Conflict of Interest Code, <https://www.ucop.edu/uc-legal/legal-resources/conflict-of-interest-code.html> (Form 700 filers).

(2) employees whose position entails the making, or participation in the making, of decisions which may foreseeably have a material effect on any financial interest.

- Individuals who manage University investments.
- Regents

Q: When does the one-year ban apply?

A: It applies when an individual has permanently left University service or is on a leave of absence.

Q: What period is covered?

A: The one-year ban extends for 12 months after leaving University employment:

- Permanent Separation from University Service: The one-year period commences when an employee or official has permanently left University service and is no longer receiving compensation, including compensation for unused vacation time.
- Leave of Absence: The one-year period will also commence upon a temporary separation if the employee or official works for any person other than the University or another State of California agency during the term of the separation.

Q: What conduct is prohibited by the one-year ban?

A: An individual subject to the one-year ban may not, for compensation, represent any other person (including a local or federal agency) by appearing before or making a communication to the University, if the appearance or communication is for the purpose of influencing any of the following:

- Administrative action, including any action relating to any rule, regulation or other action in any rate-making proceeding or any quasi-legislative proceeding. (Section 82002.)
- Permits, Licenses, Grants, Contracts, or Purchases. Any action involving the issuance, amendment, awarding or revocation of a permit, license, grant or contract, or the sale or purchase of goods or property.

Q: Would the prohibition apply to the entire University, or just the former employee's department or location?

A: The one-year ban applies to contacts with one's former campus, but not another UC campus. However, for an employee who was most recently at UCOP, the ban could apply systemwide.

Q: What conduct is *not* covered by the one-year ban?

A: The following conduct is not prohibited by the one-year ban. (The permanent ban, below, may still apply where it is the same proceeding that the person previously worked on as a UC employee. See "Permanent Ban on Switching Sides in Cases or Proceedings.")

- Uncompensated appearances or communications. Note that a payment made for necessary travel, meals, and accommodations received directly in connection with voluntary services is not considered compensation.
- Appearances in a court of law, or formal appearances before an administrative law judge.
- Advising clients or employers who themselves might appear before or communicate with the University, as long as the former official is not identified in connection with the appearance or communication to the University or the former official does not accompany the client or employer at the appearance. (However, prohibitions of the permanent ban may apply if the assistance or advice involves a proceeding the official participated in while working for the University.)
- Appearances or communications made on behalf of another state agency for whom the person has become an officer or employee.
- Appearances or communications by a local elected official to influence legislation or administrative action on behalf of the local government agency.
- A request for a formal legal opinion from the University.
- Appearances or communications by a former official to represent solely himself or herself before the University. However, prohibitions of the permanent ban may apply if the official participated in the proceeding while working for the University.
- Formal participation in a panel or conference for educational purposes or to disseminate research.

- Attendance at general informational meetings, seminars, or similar events.
- Making requests for information about any matter of public record.
- Communications with the press.
- Services performed to administer, implement, or fulfill the requirements of an *existing* permit, license, grant, contract, or sale agreement in certain circumstances; but the issuance, amendment, awarding, or revocation of any of these would be prohibited. (However, prohibitions of the permanent ban may apply in the context of administering an existing agreement.)

3. Permanent Ban on "Switching Sides" in Cases or Proceedings

The Political Reform Act states that:

1. Former University officials or employees
2. are permanently barred
3. from working on the other side of a "proceeding" that they participated in while working for the University.

Specifically:

4. A former official or employee may not represent any other person (by appearing before or communicating with the University)
5. and may not aid, advise, counsel, consult or assist any other person,
6. for compensation,
7. for a University proceeding involving specific parties in which the official or employee participated.
8. This may extend to supervisors that supervise work on a project.
(Sections 87400-87405; Reg. 18741.1.)

This permanent ban does not create a blanket ban on any individual from interacting with the University. Rather, former employees are banned *with regard to specific proceedings* that they previously participated in while working for the University.

Q&A on the Permanent Ban on "Switching Sides" in Cases or Proceedings

Q: Who should comply with this rule?

A: All University employees and Regents other than those in a purely clerical, secretarial or ministerial capacity." (Section 87400(b)).

Q: What conduct is prohibited under the permanent ban?

A: Unlike the one-year ban (described above), the permanent ban also prohibits the former employee from "backroom" assistance to the employee's new employer, including aiding, advising, counseling, consulting, or assisting any other person, other than the State of California, with the intent to influence the outcome of the proceeding. The permanent ban also bars an official or employee from acting as agent or attorney for, or otherwise representing, any other person, other than the State of California, by making any formal or informal appearance in, or by making any oral or written communication with the intent to influence the outcome of, the same proceeding in which the official or employee participated while working for the University. There is also no exception for representing one's own personal interest or a local governmental agency as there is for the one-year ban.

Q: What is a "proceeding?"

A: For purposes of the permanent ban, a "proceeding" can include a wide range of matters such as a contract negotiation or a dispute between the University and another party. "Proceeding" includes any application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties at the University. (Section 87400(c).)

Q: How do you know if you "participated" in a proceeding?

A: An official or employee has participated in a proceeding, if he or she has taken part in it personally and substantially through decision, approval, disapproval, formal written recommendation, rendering advice on a substantial basis, investigation, or use of confidential information.

- Generally, participating in a proceeding means making, participating in making, or influencing a University decision. "Participating" does not include approval or disapproval of, or rendering legal advisory opinions to University staff on, issues that do not involve a specific party.
- A former supervisor is deemed to have participated "personally and substantially" in proceedings "pending" before the supervisor's former agency that were under his or her "supervisory authority." A proceeding is under a supervisor's "supervisory authority" if the supervisor:

- Has duties that include primary responsibility within the agency for directing the operation or function of the program where the proceeding is initiated or conducted;
 - Has direct supervision of the person performing the investigation, review, or other action involved in the proceeding;
 - Reviews, discusses, or authorizes any action in the proceeding; or
 - Has any contact with any of the participants in the proceeding regarding the subject of the proceeding.
- Clerical and ministerial acts do not count as participation because they are not considered governmental decisions or matters pending before an agency.

Q: How do you know if the "same proceeding" is involved?

A: Figuring out whether the "same proceeding" is involved is a factual question that can be complicated. Here are some general guidelines:

- The permanent ban applies for the duration of any proceeding.
- A proceeding includes all aspects of that proceeding.
- A general proceeding may sometimes be segmented into different phases, which may, under some circumstances, be treated as separate proceedings.
- A new proceeding triggered by a technical defect in the prior proceeding is considered the same proceeding.

Q: What conduct is *not* covered by the permanent ban?

A: The prohibition on "switching sides" in a proceeding does not apply:

- If the former official or employee is acting on behalf of another state agency or the State of California.
- If the former official or employee is not being compensated to make the appearance or to aid or assist in the representation. Payments for travel in connection with voluntary services are not considered compensation.
- If the proceeding is "new." New contracts, even those involving the same parties, may be considered separate proceedings if they are based on new consideration and new terms in which the former employee did not participate. In addition, the application, drafting and awarding of a contract, license or approval is generally considered a new proceeding separate from the monitoring and

performance of the contract, license, or approval.

- If the former official or employee, without compensation, merely provides a declaration or testimony about a subject within his or her special expertise.
- If the former official or employee is representing himself or herself.
- If the former official or employee is formally participating in a panel or conference for educational purposes or to disseminate research.
- If the former official or employee merely attends a general informational meeting, seminar, or similar event.
- If the former official or employee makes a request for information concerning any matter of public record.
- If the former official or employee just communicates with the press.

4. Public Contract Code - Restrictions on Contracts to Provide Goods or Services to the University

NOTE: University of California – Policy BFB-BUS-43 Purchases of Goods and Services; Supply Chain Management, pp. 5, 6, 36, 37 implement these Public Contract Code requirements. <https://policy.ucop.edu/doc/3220485/BFB-BUS-43>

California Public Contract Code Section 10517 (also known as part of “SB 1467”) contains a two-year ban on a former employee from entering into a contract with the University that he or she negotiated while a University employee. Specifically,

1. No retired, dismissed, separated, or formerly employed person of the University
2. may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by any university department.
3. The prohibition shall apply to a person only during the two-year period beginning on the date the person left university employment.

In addition, the Public Contract Code contains a flat 12-month ban on former policymaking employees entering into contracts with their former University departments. Specifically,

1. For a period of 12 months following the date of his or her retirement, dismissal, or separation from the University of California,
2. no person may enter into a contract with any university department,
3. if he or she was employed by that department in a policymaking position
4. in the same general subject area as the proposed contract
5. within the 12-month period prior to his or her retirement, dismissal, or separation.

Generally, this ban applies to construction projects; contracts with private architects, engineering, environmental, and construction management firms; contracts for the sale of real property owned by the University; and contracts for the procurement of goods, services, and materials involving an expenditure of more than \$50,000, not the award of grants. (*People v. Lofchie*, 229 Cal.App.4th 240, 255-256 (2014); 88 Cal. Ops. Atty. Gen. 56.)

Q&A: Restrictions on Contracts to Provide Goods or Services to the University

Q: Who is covered by this law?

A: Anyone who was employed with the University, or otherwise appointed to serve in the University, who leaves University employment for any reason.

Q: How does this law affect former University employees who have retired?

A: Retired University employees are largely exempt from both the two-year and the 12-month prohibitions. The University may rehire such retired employees, or may contract with them for reappointment, regardless of the length of time they have been retired. The prohibition on other types of contracts would still apply, however. Retired employees are still subject to the ban for contracts for non-employment-like services and contracts for goods.

Q: What is *not* prohibited by this law?

A: The following are exceptions from the general rule and are not prohibited:

- The 12-month ban does not apply to a contract requiring the person's services as an expert witness in a civil case.
- The 12-month ban does not apply to a contract for the continuation of an attorney's services on behalf of the University on a matter he or she was involved with prior to leaving the university.

- Neither the two-year nor the 12-month ban prohibits contracting with retirees as described above.
- Neither the two-year nor the 12-month ban applies to inventors and authors of intellectual property.

Q: With regard to the 12-month ban, what does it mean to be in a “policymaking position”?

A: Neither the Public Contracting Code nor University policy defines “policymaking” in this context. Clearly, top-level administrators such as the President, Vice Presidents, Chancellors, Vice Chancellors, and Deans would be considered to have a policymaking position. Individual faculty members and Department Chairs are considered to be non-policymaking positions for this purpose. For other employees, this would be a fact-based determination, looking at the role the former employee played in his or her former department.

Q: With regard to the 12-month ban, what does “employed by that department” mean?

A: In this context, the ban may apply even where the contract is not with the precise department where the former employee worked. If two departments are closely intertwined, the ban may apply to contracting with the related department.

Q: With regard to the two-year ban, what does it mean to have “engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision making process” of a contract?

A: This ban would apply if the individual, when he or she was a University employee, had negotiated for the University concerning the terms of a future contract, or engaged in planning the nature of the contract. Merely having a passing discussion about the possibility of contracting to provide goods or services after separation from the University would not be sufficient to trigger the ban, so long as details of the potential contract and the likelihood of a contract were not “arranged” at that time.