

The Commonwealth of Massachusetts State Ethics Commission

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COMMISSION FACT SHEET

Former State Employees Serving as Legislative Agents

For one year after completing services for the commonwealth, former state employees are subject to certain restrictions on acting as a "legislative agent." Specifically, G.L. c. 268A, §5(e) prohibits former state employees or elected officials, including former members of the general court, from acting as a legislative agent for anyone other than the commonwealth or a state agency before the same governmental body with which they have been associated, within one year after they leave that body. The purpose of §5(e) is to establish a one year cooling off period for former state employees who might otherwise be in a position to take advantage of former associates whose loyalties they acquired as state employees.

This fact sheet answers the most commonly asked questions about §5(e).

- Q.** Who is covered by the §5(e) restrictions?
- A.** Any former state employee. The definition of state employee in G.L. c. 268A includes any person elected or appointed to serve a state agency. It includes full-time, part-time and unpaid state employees. It also covers temporary state employees such as summer interns. Section 5(e) applies to former employees of all branches of state government, including the legislature, judiciary and executive branch, and covers former employees of independent state agencies or instrumentalities, including state authorities. Section 5(e) does not apply to former employees of county or municipal agencies.
- Q.** What are the §5(e) restrictions?
- A.** For a one year period following completion of services, former state employees are prohibited from acting as a legislative agent ("lobbyist") for anyone other than the commonwealth or a state agency before the same governmental body with which they were previously associated. The term "legislative agent" is defined in both G.L. c. 3 §39 and G.L. c. 268B §1(k) as "any person who for compensation or reward does any act to influence legislation, or to promote, oppose or influence the governor's approval or veto thereof or to influence the decision of any member of the executive branch where such decision concerns legislation or the adoption, defeat, or postponement of a standard, rate, rule or regulation pursuant thereto." The term includes "persons who, as any part of their regular and usual employment and not simply incidental thereto, attempt to promote, oppose or influence legislation or the governor's approval or veto thereof, whether or not any compensation in addition to the salary for such employment is received for such services."

In order to be considered acting as a legislative agent for the purposes of §5(e), the activity must be:

1. compensated;
2. performed on behalf of someone other than the commonwealth or a state agency;
3. related to the promotion, opposition or influence of either legislation or of the adoption of standards, rates, rules or regulations by an executive branch agency, and
4. part of the person's regular, private employment, as opposed to an incidental activity.

The most common forms of legislative agent activity are promoting, opposing or influencing legislative action on a bill and promoting, opposing, or influencing gubernatorial action on a bill. Legislative agent activity also includes indirect lobbying such as communicating information to a legislative agent; helping to formulate and articulate positions, and soliciting and assisting the lobbying activities of others by drafting letters and by advising others how to support or oppose positions.

Q. Before which state agencies do the §5(e)restrictions apply?

A. A former state employee is prohibited from serving as legislative agent before the same governmental body with which he or she was previously associated. For example,

1. A former member or employee of the legislature cannot act as legislative agent before either branch of the General Court.
2. A former employee of a state secretariat cannot act as legislative agent before either the secretariat or agencies within the secretariat.
3. A former employee of a state board cannot act as legislative agent before that same board but may act as legislative agent before state agencies which are independent of the board, including the governor's office.
4. A former state employee who discusses legislation with a private association, one of whose members is incidentally employed by a state agency, will not be deemed to be acting as legislative agent before that state agency.

Q. Are there other restrictions which apply to former state employees?

A. Yes. Aside from §5(e), a former state employee is subject to limitations under §5(a) and §5(b). These limitations apply to particular matters in which the employee previously participated or for which the employee had official responsibility. The conflict of interest law also places restrictions on the partners of former state employees, §5(c), as well as on the use of confidential information, §23(c). The Commission's Legal Division can provide, upon request, specific advice about the application of these provisions.