



Veteran With Outside Federal Employment

Issue:

This brief explains the impact of federal employment on Veterans.

(For purposes of this brief, the regulations when referring to Service-Disabled Veterans applies equally to Veterans.)

The Regulations:

5 C.F.R. § 2635.101(a) provides:

Each employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain. To ensure that every citizen can have complete confidence in the integrity of the Federal Government, each employee shall respect and adhere to the principles of ethical conduct set forth in this section, as well as the implementing standards contained in this part and in supplemental agency regulations.

5 C.F.R. § 2635.101(b) provides, in pertinent part:

The following general principles apply to every employee and may form the basis for the standards contained in this part. Where a situation is not covered by the standards set forth in this part, employees shall apply the principles set forth in this section in determining whether their conduct is proper.

(9) Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.

(10) Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.

5 C.F.R. § 2635.705(a) provides:

Unless authorized in accordance with law or regulations to use such time for other purposes, an employee shall use official time in an honest effort to perform official duties. An employee not under a leave system, including a Presidential appointee exempted under 5 U.S.C. 6301(2), has an obligation to expend an honest effort and a reasonable proportion of his time in the performance of official duties.

28 C.F.R. § 45.4(a) provides:

(a) Employees may use Government property only for official business or as authorized by the Government. See 5 CFR 2635.101(b)(9), 2635.704(a). The following uses of Government office and library equipment and facilities are hereby authorized:

(1) Personal uses that involve only negligible expense (such as electricity, ink, small amounts of paper, and ordinary wear and tear); and

(2) Limited personal telephone/fax calls to locations within the office's commuting area, or that are charged to non-Government accounts.

38 CFR § 125.13(a) provides:

To be an eligible SDVO SBC, the management and daily business operations of the concern must be controlled by one or more service-disabled veterans (or in the case of a veteran with permanent and severe disability, the

spouse or permanent caregiver of such veteran). Control by one or more service-disabled veterans means that both the long-term decisions making and the day-to-day management and administration of the business operations must be conducted by one or more service-disabled veterans (or in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran).

38 CFR § 125.13(k) provides:

There is a rebuttable presumption that a service-disabled veteran does not control the firm when the service-disabled veteran is not able to work for the firm during the normal working hours that businesses in that industry normally work. This may include, but is not limited to, other full-time or part-time employment, being a full-time or part-time student, or any other activity or obligation that prevents the service-disabled veteran from actively working for the firm during normal business operating hours.

48 CFR § 3.601 provides:

(a) Except as specified in 3.602, a contracting officer shall not knowingly award a contract to a Government employee or to a business concern or other organization owned or substantially owned or controlled by one or more Government employees. This policy is intended to avoid any conflict of interest that might arise between the employees' interests and their Government duties, and to avoid the appearance of favoritism or preferential treatment by the Government toward its employees.

(b) For purposes of this subpart, special Government employees (as defined in 18 U.S.C. 202) performing services as experts, advisors, or consultants, or as members of advisory committees, are not considered Government employees unless—

(1) The contract arises directly out of the individual's activity as a special Government employee;

(2) In the individual's capacity as a special Government employee, the individual is in a position to influence the award of the contract; or

(3) Another conflict of interest is determined to exist.

48 CFR § 3.602 provides:

The agency head, or a designee not below the level of the head of the contracting activity, may authorize an exception to the policy in 3.601 only if there is a most compelling reason to do so, such as when the Government's needs cannot reasonably be otherwise met.

What This Means:

In most industries, it would be very difficult for an individual to manage and operate a business and, at the same time, be a fulltime Federal employee with duty hours ranging from between 7 a.m. and 5 p.m.

Both the long-term decision making, and the day-to-day management and administration of business operations must be conducted by one or more Veterans.

There is a rebuttable presumption that a Veteran does not control the firm when one or more Veterans are not able to work for the firm during normal business hours that businesses in the industry normally work.

If the presumption is triggered, then the firm must rebut the presumption. This must be done by demonstrating that one or more Veterans are able to effectively manage and control the firm during normal working hours, without delegating management responsibilities.

However, as a Federal Government employee, there is an added responsibility. By regulation, Federal Government employees are required to use official time to perform official duties and to use Government property only for official business.

If the firm successfully overcomes the presumption and obtains verified status, the Veteran-owned company may still be ineligible for Federal Government contracts unless the Veteran would otherwise qualify under a narrow set of circumstances.

Under 48 CFR § 3.601(a), Contracting Officers are prohibited from knowingly awarding a contract to a Federal Government employee or to a business concern or other organization owned or substantially owned or controlled by one or more Federal Government employees. However, certain types of Federal government workers may not be considered “federal” employees, such as special Government employees performing services as experts, advisors, or consultants, or as members of advisory committees. Unless the contract arises directly out of the individual's activity as a special Government employee, the individual is in a position to influence the award of the contract or another conflict of interest is determined to exist. Persons claiming status as special Government employees will be examined on a case-by-case basis.

participants must read the applicable regulations and determine how best to meet these requirements. This Verification Assistance Brief does not constitute legal notice or replace governing regulations.

For more information about VA Small and Veteran Business Programs, visit
<http://www.va.gov/osdbu>.

VA Office of Small and Disadvantaged

Business Utilization

1–866–584–2344

Monday–Friday | 8 a.m. to 6 p.m. (Eastern)

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