

## **LAW REVIEW 14063**

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### **Federal Laws Restricting Seeking and Taking Post-Government Employment – Both within and outside the Federal Government**

**By Commander Wayne L. Johnson, JAGC, USN (Ret.)**

#### **9.0--Miscellaneous**

**Q:** This relates to the questions I asked and had answered in Law Review 14062. I am the 2006 Naval Academy graduate who is “getting out” and leaving active duty on September 30, 2014.

Now that I know I can draw military pay while on terminal leave and take a civil service job at the same time, are there any other restrictions or problems I need to be aware of regarding seeking employment before I am discharged and restrictions regarding post-government employment after I am out?

**A Human Relations (HR) person told me that I cannot take a civil service position with any component of the Department of Defense (DoD) until I have been off active duty for at least 180 days. What is up with that?**

**A:** As to the 180-day matter, there is a grain of truth in what you were told but there is some good news. First, this rule does not apply to you since you are not retiring from the military—you are getting out after serving eight years. The restriction only applies to military retirees, but there is good news for them too as the law is not a total bar *and* the restriction is currently suspended. Here is a brief summary on that:

180-Day Restriction. A military retiree must wait 180 days after his or her retirement before taking a civilian job in **any** branch of DoD, unless prior approval has been received from the service secretary. This restriction does not apply to shortage category jobs or during a national emergency (5 U.S.C. 3326). The 180-day restriction was intended to prevent the creation of a civil service position for the departing service member to fill or to show undue favoritism to same. **Currently, the President has suspended this restriction until September 13, 2014** per <http://www.gpo.gov/fdsys/pkg/FR-2013-09-12/pdf/2013-22406.pdf>. The suspension has been in place for several years and will probably continue to be renewed for at least the next few years.

As to post-employment restrictions and procurement integrity rules that apply to procurement officials: First, anyone leaving federal service, military or civilian, should attend a post-government employment ethics briefing as there are many pitfalls that one must be careful of both while seeking employment while still a federal employee and after leaving government service.

Depending on your situation, some of these rules may not apply to you. Some rules only apply to military personnel who are retiring. There are also laws that apply to all persons leaving federal military or civilian service. Some laws and rules only apply to senior government officials (flag and general officers and members of the Senior Executive Service), financial disclosure form filers, and procurement officials. Other rules focus on who you are going to work for.<sup>1</sup> What follows is not intended to be a definitive discussion of these many rules. Rather, I provide resources that have been created by the DoD subject matter experts to make you aware of what you need to look out for. You need to get

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<sup>1</sup> For example, please see Law Review 1006 (January 2010), concerning the permission requirement for military retirees who wish to accept employment by foreign governments. We invite the reader's attention to [www.servicemembers-lawcenter.org](http://www.servicemembers-lawcenter.org). You will find 1,054 articles about laws that are especially pertinent to those who serve our country in uniform, along with a detailed Subject Index and a search function, to facilitate finding articles about very specific topics. ROA initiated this column in 1997 and adds new articles each week, including 169 new articles in 2013 and another 63 so far in 2014.

advice before doing something that might cause you legal problems.  
When in doubt, ask!

If you need to know what the appropriate ethics office is for you to contact, contact the DoD Standards of Conduct Office (SOCO) at (703) 695-3422 or by e-mail at [OSD.SOCO@MAIL.MIL](mailto:OSD.SOCO@MAIL.MIL).

A military ethics advice attorney will most likely ask you to fill out a DD Form 2945 <http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd2945.pdf> or similar form as part of the process.

Here are several primary resource materials:

**POST-GOVERNMENT SERVICE EMPLOYMENT  
RESTRICTIONS (INCLUDING THE PROCUREMENT  
INTEGRITY ACT) dated March 2014**

[http://www.dod.mil/dodgc/defense\\_ethics/resource\\_library/deskbook/pgse\\_restrictions\\_and\\_procurement\\_integrity.pdf](http://www.dod.mil/dodgc/defense_ethics/resource_library/deskbook/pgse_restrictions_and_procurement_integrity.pdf)

**DoD Standards of Conduct Office (SOCO) SEEKING  
EMPLOYMENT RESTRICTIONS (RULES WHEN YOU ARE  
LOOKING FOR A NEW JOB) Revised Jan. 2014**

[http://www.dod.mil/dodgc/defense\\_ethics/resource\\_library/pgser\\_seeking.pdf](http://www.dod.mil/dodgc/defense_ethics/resource_library/pgser_seeking.pdf)

**DoD Standards of Conduct Office (SOCO) Ethics Counselor's  
Deskbook :**

[http://www.dod.mil/dodgc/defense\\_ethics/resource\\_library/deskbook/index.html](http://www.dod.mil/dodgc/defense_ethics/resource_library/deskbook/index.html). Scroll down and see “Post-Government Employment and Program Integrity” materials. The “current” materials that you will find in there are:

[Post-Government Employment and Procurement Integrity \(Rev. 03/2014\)](#)

Outlines key provisions of seeking and negotiating employment,

disqualification requirements, lifetime bars for particular matters, senior official representation back to component rules, Emoluments Clause, and more.

[Presentation](#) (Rev. 03/2014)

[DoD Seeking Employment Restrictions](#) (Rev. 01/2014)

[DoD Procurement Integrity Act Restrictions](#) (Rev. 01/2014)

[DoD Employment Restrictions - Non-Senior](#) (Rev. 01/2014)

[DoD Employment Restrictions - Senior](#) (Rev. 01/2014)

[DoD Guidance: Application of Procurement Integrity Act and Regulations](#)

[DoD Guidance: Applying Compensation Ban to Program Managers](#)

[SOCO White Paper: Application of Emoluments Clause to DoD Civilian Employees and](#)

[Military Personnel](#) (Rev. 03/2013)

[Emoluments Presentation](#) (Rev. 03/2014)

[Annual Post-Employment Certification Form](#) (Rev. 01/2014)

The above materials will be updated from time to time, so always check [http://www.dod.mil/dodgc/defense\\_ethics/resource\\_library/deskbook/index.html](http://www.dod.mil/dodgc/defense_ethics/resource_library/deskbook/index.html) to see if any new or updated materials have been added.

For another resource go to [http://www.dod.mil/dodgc/defense\\_ethics/](http://www.dod.mil/dodgc/defense_ethics/) and click on “Ethics Resource Library” then click on “SOCO Publications & Handouts” where there is a lot of stuff. Part of the information includes examples of letters one can obtain from an authorized ethics official stating whether or not your employment plans will violate federal law. Some like to call them “safe harbor letters.”