A Question of Ethics
Ethics Rules Bind Furloughed Staffers

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Q: I am chief of staff for a member of the House with a question about how House ethics rules might impact staffers on furlough. The recent sequester has cut budgets for members' offices, and we are working through how to deal with the cuts. I am wondering whether the rules would allow staffers to do part-time work with their former law firms if they are placed on furlough. I know that conflict-of-interest rules prohibit staffers from doing some types of outside work, including legal work for clients. But, would this restriction apply to staffers on furlough? And, would it apply even if the staffers were to do purely administrative work and perform no legal services at a law firm?

A: Great questions. In fact, the House Ethics Committee recently issued a memorandum reminding members and staffers of laws and rules to consider when dealing with budget cuts required by the sequester, including the subject of your question: furloughs.

The House Administration Committee, which oversees the House's day-to-day operations, defines a furlough as the “placement of an employee in a temporary non-duty, non-pay status because of lack of work or funds, or other non-disciplinary reasons.” Placing a staffer on furlough is certainly allowed. However, doing so can raise thorny ethics issues for both the staffer and the office.

One is the issue you raise, namely what types of employment are allowed for a staffer while on furlough.

As a threshold matter, yes, a furloughed staffer is still considered a House employee and remains bound by restrictions on staff employees, with certain limited exceptions. The recent ethics memorandum confirms this, stating that House staffers who wish “to undertake non-congressional employment while on furlough are reminded that they remain House employees and, therefore, all rules regarding outside employment remain in effect.”

One set of restrictions prohibits staffers from engaging in certain types of outside employment — most significantly employment involving the provision of fiduciary services. These restrictions appear not just in House rules but also in a federal statute: the Ethics Reform Act of 1989.

As the House Ethics Manual explains, in employment involving a fiduciary relationship, the potential conflict of interest lies in the possibility for a divergence of public and private interests on a particular governmental matter. Among the prohibited fiduciary services is the one you mention: legal services.

“Members and senior staff are prohibited from engaging in professions that provide services involving a fiduciary relationship, including the practice of law,” the manual states.

Note that this restriction applies only to “senior staffers” — which the rules define as staffers who, for at least 90 days in a calendar year, are paid a salary at a rate equal to or exceeding 120 percent of the minimum rate of basic pay for GS-15 of the executive branch’s General Schedule.

Currently, that amount is $119,553.60. Staffers paid at a lower rate than this are not bound by the prohibition against providing fiduciary services.

As to your second question, yes, the restriction applies to any work for a law firm, even work that does not involve the provision of legal services. Members and senior staffers may not receive “compensation for affiliating with or being employed by a firm, partnership, association, corporation, or other entity that provides professional services involving a fiduciary relationship,” the ethics manual says. Thus, a senior staffer may not receive “compensation for serving as, for example, a business manager or administrative assistant of a law firm.”

In short, senior staff, while employed by the House, may not receive compensation from a law firm for employment by the law firm in any capacity.

In addition, these restrictions apply to all services involving a fiduciary relationship — not just legal services. Although the Ethics Reform Act does not define the term “fiduciary,” the task force report that precipitated the legislation states that the term should not be interpreted narrowly and that it reaches real estate, insurance, and business consulting and advising services.

In addition, the House Ethics Manual states that the restriction extends generally to consulting and advising services in political matters and public relations.

And, again, the restriction would prevent senior staffers from being employed in any capacity for an entity that provides any such services.

Finally, it warrants mention that this is just one narrow area where the ethics rules could complicate efforts to deal with the effect of the sequester on congressional offices. As the recent Ethics Committee memorandum points out, there are many other potential pitfalls as well, including restriction on using furloughed employees for official work, as well as the use of campaign funds to compensate for cuts to official budget accounts. You are smart to be mindful of these pitfalls.
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