



D17 OUTSIDE EMPLOYMENT

Active Duty, Reserve, and Civilian Coast Guard members are regularly engaged in employment during off-duty hours for various reasons. While employees are not normally restricted from such employment, they must be cognizant of the various conditions governing their off-duty activities. These conditions are found primarily in the **Standards of Ethical Conduct** set forth in 5 CFR 2635 and COMDTINST M5370.8B, and **Military Civil and Dependent Affairs** provided in COMDTINST M1700.1. The regulations and policies provided in each are discussed in further detail below, particularly as they pertain to off-duty employment. For additional guidance, several scenarios are presented in a question and answer format with responses based upon these references.

Authorities

The Standards of Ethical Conduct for Employees of the Executive Branch set forth in 5 CFR 2635 outlines the obligations of public service. A basic general principle, outlined in § 2635.101(b)(10), prohibits employees from engaging in outside employment, or seeking outside employment, that conflicts with official Government duties and responsibilities. Outside activities, to include outside employment, are further defined in §2635 Subpart H, which reiterates the stance that employment requiring a member's disqualification from duties critical to their position is prohibited. Subparts D – Conflicting Financial Interests, E – Impartiality in Performing Official Duties, F – Seeking Outside Employment, and G – Misuse of Position, all contain provisions that may be relevant to a member's outside employment.

A key component of Commandant Instruction M5370.8B (COMDTINST M5370.8B) is the summary of the major provisions of § 2635. Whereas § 2635.103 exempts enlisted members and delegates creation of ethical conduct guidelines to the agency for which the enlisted member is employed, COMDTINST M5370.8B in turn makes all of the provision within § 2635 applicable to enlisted members as per paragraphs 5 and 6 of the notice. Outside activities and employment are discussed in Section 2.I, however, pertinent guidance exists in sections 2.E., 2.F., 2.G., and 2.H. COMDTINST M5370.8B effectively mirrors the format of § 2635.

COMDTINST M1700.1 contains two essential guidelines relevant to Coast Guard personnel seeking off-duty employment and their commanding officers. Chapter 1.E.1.a. reiterates that their military duties take precedence over any outside activities and that they are subject to recall at any time. Chapter 1.E.2. requires written notification from the member to their commanding officer of any off-duty employment, to include a description of the duties and an estimate on the weekly work hours. In the event a commanding officer questions the legitimacy of a member's off-duty employment, Chapter 1.E.2. directs commanding officers to request employment determinations to Commandant (CG-1221).

Analysis and Opinion

Example 1) I am an MK2 at Station XXXXX. I have a garage at my house and would like to provide vehicle mechanic services, for profit, to personnel at my unit. Is this okay?

Although not prohibited by any regulation contained within 5 CFR 2635 –Standards of Ethical Conduct for Employees of the Executive Branch, a potential conflict is presented in CIM M1700.1-Military Civil and Dependent Affairs. Chapter 1.E.1.b.(9) prohibits personal commercial solicitation and sale to military personnel who are junior in grade or rate. “Personal commercial solicitation” is defined within the paragraph as “those situations where a military member is employed as a sales agent on commission or salary and contacts prospective purchasers suggesting they buy the commodity, real or intangible, that he or she is offering for sale”. While the phrase “employed as a sales agent” appears to exclude the direct performance of a service at a cost to other military personnel, further reading of this paragraph suggests otherwise. It states that the guidance is intended to prohibit business dealings among members where grade, rank, or position may be brought to bear or appear to do so. Providing a service to a junior member, where the senior member receives payment for the service provided, constitutes a business dealing. As such, it is recommended that MK2 refrain from providing mechanic services to individuals who are junior in grade, regardless of the unit. It is also recommended that MK2 ensure his business is operated in accordance with all local, state, and federal laws where applicable.

Example 2) I’m a DC1 working in housing at Base XXXXX. I have a valid 100-ton near coastal master’s license and have the opportunity to work for a tour boat operator while off duty. The vessel I would be operating is a small passenger vessel under 100 GT (T-boat), certificated to carry 25 passengers on a lakes, bays, and sounds route. Am I allowed to do this?

The member is not prohibited by regulation or policy from working in this capacity during their off-duty hours. 5 CFR 2635.802, referenced by CIM 5370.8B Section 2.I, prohibits outside employment if it conflicts with the member’s official duties to the point that it would require their disqualification from performing those duties. Although the vessel is subject to routine law enforcement boardings and inspection by Coast Guard marine inspectors, the member’s current position does not create the need for a disqualification in this case. Worth noting, active duty and reserve personnel are prohibited from using their military title in connection with any commercial enterprise in accordance with CIM M1700.1 Section I.D.2. The member may not give the appearance that the commercial entity they are employed by is in any way endorsed or officially sanctioned by the Coast Guard. Finally, the member is prohibited from using their official position and/or title with the intention to coerce an individual for the benefit of their outside employer. For example, should the vessel be subject to a law enforcement boarding while operated by the member, they must refrain from appearing to use their official position or title to impact the outcome of the boarding.

Example 3) I'm an MST1 at MSU XXXXX, after completing a dockside examination aboard the commercial fishing vessel XXXXXX, I was offered an opportunity to work during liberty or while on leave as a deckhand aboard the vessel. This sounds like it would be fun. The vessel is under contract to sell their product through XXXXX Seafood, who has multiple fish processing locations throughout the region. Can I accept this job?

There are several issues at hand here. As implied by the member, a portion of their duties includes dockside examinations aboard commercial fishing vessels (CFV). It remains unclear whether these are official duties assigned to the member's position, or if they simply augment the dockside examination program to assist a resident civilian dockside examiner. The member also indicates that the potential employer in question is under contract through a local fish processor with multiple plants throughout the region. This likely requires these facilities to maintain a certificate of adequacy (COA) as per 33 CFR 158.135. If in fact the facility is subject to these requirements, the member's position and official duties would likely require that they and/or their subordinates conduct annual inspections to determine the adequacy of the facility's waste reception capabilities outlined in 33 CFR 158 Subpart D. CIM M1700.1 defines "prohibited employment", in part, as that which by the nature of the work interferes with or is not compatible with the performance of the member's duties. CIM 5370.8B, Section 2.I. further prohibits outside employment that would require the member's disqualification from matters critical to their duties. Whereas disqualification from dockside examination activities aboard commercial fishing vessels may be warranted, the member's responsibilities to conduct certificate of adequacy inspections on fish processors is likely an essential element of their position. Due to the potential conflict of interest that would arise, it is not recommended that the member accept the offer of employment.

Example 4) So what if I purchased a commercial permit and bought a hand troller to commercially fish for salmon?

A commercial operation individually owned and operated by the member removes several conflicts present in the previous scenario. As it does not appear that the member's operation would be under contract through a particular agent, they would be free to choose who to market and sell their product to. So long as the member is receiving fair market value for their product, no appearance of a conflict pertaining to inspections on the fish processor in the above scenario exists. However, as a qualified commercial fishing vessel examiner, it is recommended that the member seek approval to be disqualified from conducting dockside exams to eliminate the possibility for a conflict to arise.

Conclusion

Coast Guard personnel who choose to engage in off-duty employment must do so in a manner not contradictory to or conflicting with their military status. The general principles and guidance on the ethical legitimacy of the off-duty employment they choose to engage in is contained with 5 CFR 2635, Commandant Instruction Manual 5370.8B, and Commandant Instruction Manual M1700.1. While members are encouraged to consult each of these for guidance, should they require clarification on the legitimacy of a particular activity, they should seek advice from an Assistant Ethics Official. In accordance with CIM 5370.8B Section 1.B.2., members will not be subject to disciplinary action if they act in good faith on the advice of an ethics official.