



POST-GOVERNMENT EMPLOYMENT FREQUENTLY ASKED QUESTIONS (FAQS) DHA EMPLOYEES – NON-SENIOR OFFICIALS

These FAQs apply to personnel who are not Senior Officials (i.e., personnel who are not General Officers, Flag Officers, SES).

If you need further clarification or have additional questions, you may contact your local ethics official or DHA HQ Ethics Branch (DHA-OGCEthicsOffice@health.mil) for more information.

1. How do I know if I need to request PGE advice?

You need to request PGE advice if you are or will be seeking employment with any entity (including state and local Governments) doing business with or seeking action from the Federal Government.

- This includes, but is not limited to, contractors such as pharmaceutical companies, consultants, and medical service companies that do business with DHA. It includes, but is not limited to, hospitals and academic institutions that have agreements with DHA's MTFs or participate in clinical investigations. It also may include non-profit institutions and medical associations that license and certify military physicians and associations that inspect and certify DHA medical services or facilities.
- “Seeking action from” can include any official action, regardless of significance and may include meeting requests, requests for speakers, participating in studies, or joining agreements.

You do not need to request PGE advice if you:

- Plan to fully retire and “go fishing”;
- Plan to work for entities that do not do business with or seek action from the Federal Government; or
- Plan to work for another Federal Government agency or entity.

If you are not sure, it is always best to check with an ethics official.

2. When in the process should I seek advice about my future work plans?

Early! Seek advice as soon as you are thinking about leaving the Federal Government, especially if you are going into the private sector. There are many potential conflicts of interest in your current position that can arise just by talking to potential employers or even just sending out your resume. Understand these challenges before you begin your “job hunt.”

3. How can I obtain PGE advice?

Contact the DHA HQ Ethics Branch (DHA-OGCEthicsOffice@health.mil).

Additionally, the [DoD's Standards of Conduct Office's website](#) has many helpful tools and information about PGE.

4. How can I request a PGE opinion letter?

Once you have at least a tentative job offer with a detailed description of your new duties, you may request an opinion letter. You must submit a complete and accurate [DD Form 2945, Request for Post-Government Employment Opinion](#), along with your request to your ethics official

Note: Section 847 of the 2008 NDAA requires that certain individuals who participated in a procurement valued in excess of \$10 million submit an online version of the [DD Form 2945](#) using the After Government Employment Advisory Repository (AGEAR) system. If you think this may apply to you, check with an ethics official. The link to AGEAR request can be found www.fdm.army.mil on the lower left side of the page.

5. What if a company wants an opinion letter in order to interview me?

An opinion letter applies the law to your specific facts and circumstances and requires analysis of both your Federal Government duties and your anticipated post-Government duties. It is not feasible to issue a letter prior to receipt of an offer with specific duties, nor would a generic restatement of the law be of use to your prospective employer in determining your restrictions. (A tentative offer is enough and can be contingent upon receipt of the letter.) Instead, you may do a [self-certification memorandum](#), which most companies find sufficient.

6. As a former employee of DHA, may I make a brief telephone call to a colleague in my former office concerning an ongoing clinical investigation that I worked on as a DHA employee? I now work for a company that is involved in that same clinical investigation.

No. You worked on this clinical investigation as a DHA employee, so you are subject to the Lifetime Ban for the lifetime of this investigation. Here, there is a clear appearance with an intent to influence or gain inside information, which would be impermissible “side switching.” Remember, while former employees may provide behind the scenes assistance to another person, the assistance may not involve a communication to or an appearance before an employee of the United States. **Note: This rule (18 U.S.C. § 207) does not apply to former military enlisted personnel.**

- 7. In the example above, what if I did not work on the clinical investigation myself, but I was a supervisor and my subordinate did. It has been a year and a half since I left DHA. Is this okay now?**

No. The Two-Year Representational Ban would come into play. For two years after leaving Government service, you may not represent someone else to the Government regarding particular matters involving specific parties that you did not work on yourself but were pending under your responsibility during your last year of Government service.

- 8. I prepared a report for one of my clients, a DHA contractor. I worked on this contract while I was a DHA employee. I know this report will be presented to DHA by my client. The report is not signed by me, but the document does bear the name of my small firm. I expect that it is commonly known throughout DHA that I am the author of the report. Is this okay?**

No. When the report is submitted to the DHA, you would be making a communication and not merely confining yourself to behind-the-scenes assistance. The circumstances indicate that you intended the information to be attributed to yourself. However, if you did not work on this contract as a DHA employee, this would likely be permissible. Similarly, if the work you did on the document could not be attributable to you, then it would be permissible as behind-the-scenes work.

- 9. As a former DHA employee, may I call a current DHA employee to complain about the clinical investigation methods being used by DHA in connection with a clinical investigation that my current employer is working?**

Yes, as long as you did not work on this same clinical investigation during your time as a DHA employee.

- 10. May I join a call with my supervisor and DHA to discuss the terms of a contract that my employer has with DHA? I was a COR on this contract at DHA.**

No. You worked on this contract as a DHA employee. Therefore, you are subject to the Lifetime Ban for the lifetime of this contract. Under some circumstances, a former employee's mere physical presence, without any communication by the employee concerning any material issue or otherwise, may constitute an appearance with the intent to influence an employee of the United States.

- 11. As a DHA employee, I drafted one provision of a DHA contract to procure new software. After I left Government, a dispute arose under the same contract concerning a provision that I did not draft. May I represent the contractor in this dispute?**

No. The contract as a whole is the particular matter involving specific parties and may not be fractionalized into separate clauses for purposes of avoiding the prohibition of the Lifetime Ban.

12. What if, in the previous example, a new software contract was awarded to the same contractor through a full and open competition, following my departure from DHA. Would it be okay now?

Yes. Although no major changes were made in the contract terms, the new contract is a different particular matter involving specific parties.

13. I served on a source selection board for a contract awarding a contractor with a \$15 million contract four months ago. May I go work for this contractor on a matter that has nothing to do with DHA?

No. The Procurement Integrity Act limits a Federal Government employee who participated in awarding a contract in excess of \$10 million or served as a contracting officer, source selection authority, or member of a source selection team, technical evaluation team, program manager, or deputy program manager for a contract in excess of \$10 million from receiving any compensation for one year from the time of the work was completed. You may not work for this contractor for one year from the time of your participation.

14. Same example as above, but you are going to work for one of the contractors that did not win the bid. Is this permitted?

Yes, but you must first request a post-government employment opinion through the AGEAR system found on the landing page of www.fdm.army.mil. This is required because you served on a source selection board for a contract over \$10 million in your last two years of employment. You must request an opinion through AGEAR in accordance with Section 847, NDAA 2008, before receiving any compensation from a DoD contractor.

15. What is required for a military retiree to gain approval to work for a foreign government or a contractor that is controlled by a foreign government?

The Emoluments Clause prohibits active duty and Federal civilian employees from receiving pay from a foreign government. This bar also applies to military retirees. Retirees may seek approval through their Service secretary which is then processed through the Department of State. Not seeking approval in advance may jeopardize your retired pay.

16. May I work for a Government contractor while I am on terminal leave?

You remain a full time Government employee while on terminal leave. The criminal statutes, 18 U.S.C. §§ 203 and 205, prohibit full time Government employees from representing the contractor back to the Government. Ideally, you should only perform behind the scenes work during this time. Please contact your ethics official for more clarification on the restrictions of the criminal statute, as you do not want to get close to the line. **Note: 18 U.S.C. §§ 203 and 205 do not apply to enlisted personnel.**

17. May a civilian employee work for a Government contractor while in an administrative leave status?

Employees in an administrative leave status are considered full time Government employees for purposes of 18 U.S.C. §§ 203 and 205, which prohibit full time Government employees from representing back to the Government on behalf of the contractor. Ideally, you should only perform behind the scenes work during this time. Please contact your ethics official for more clarification on the restrictions of the criminal statute, as you do not want to get close to the line.