

OFF-DUTY EMPLOYMENT



Office of the Staff Judge Advocate Pope AAF

43 AMOG/JA
Legal Assistance & Preventive
Law
Pamphlet Series

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INTRODUCTION

Is the high cost of living causing you to consider a second or even third job? It's common to see members of the community working in any number of off-duty employments, both on and off base.

PRIMARY DUTIES

While it may seem like everyone has some sort of off-duty employment, the first thing to remember is that your Air Force job comes first. If you fail your Air Force duties in any way, you may be subject to disciplinary action.

Air Force personnel should inform their supervisor prior to engaging in outside employment. Most installations, including Pope AAF, have a local or command policy that requires individuals to complete an AF IMT 3902, *Application and Approval for Off-Duty Employment*. The application must be reviewed and approved by your supervisor.

Off-duty employment is subject to limitations and prohibitions stated in the Joint Ethics Regulation. Air Force personnel may not engage in off-duty employment, with or without compensation, that interferes with the performance of their government duties, may reasonably be expected to bring discredit upon the Air Force or the Department of Defense, may tend to create a conflict of interest, or that will detract from readiness or pose a security risk.

Off-duty employment requirements are set to ensure the member's safety, welfare and to ensure there are no ethical violations. A few considerations are made when determining if a member is capable of off-duty employment: their current work-load, on-the-job training requirements and mission requirements. In addition, DoD 5500.7-R, Joint Ethics Regulation, is utilized to determine whether the potential for ethical issues exist by engaging in off-duty employment. It is up to the member's commander to analyze all aspects of the request when determining whether the member is capable of the off-duty employment.

When deciding on the type of off-duty employment to apply for, consider the following:

How many hours per week would you be working? Do the hours interfere with your normal/expected military duty hours? Did you consider travel time and gas money to and from your off-duty employment? Who would you be working for, i.e., could the company present a conflict with the Air Force, your military duties; or bring discredit upon the armed forces?

COVENANT NOT TO COMPETE

If your new employer asks you to sign an employment contract, be aware, the contract may include a *covenant not to compete*, which creates an inherent conflict with the Air Force.

These covenants (promises) protect the employer from having to compete with a former employee

after the employee has had extensive contact with the employer's clientele and business secrets. In many instances, the employer has invested heavily in training the employee -- either on the job or by helping pay for education. Normally, these agreements are only an issue if the employee's skills are unique enough to merit special protection. A high school student behind the counter at the local ice cream parlor probably would not have to worry; however, a computer programmer, lawyer, mechanic, or beautician may be held to such an agreement.

An example: Dentist Jones joins the "Filling's Family Dental Practice" in Fayetteville. The contract Jones signs includes this clause: "Upon the voluntary or involuntary termination of Jones's employment with Filling's Family Dental Practice, he agrees not to establish his own practice or to join another dental practice within 15 miles of the Fayetteville City limits for three years."

After signing the employment contract, if Jones is fired, or is an excellent dentist but is unhappy with the Filling's Family Dental Practice, he must abide by the contract. Jones cannot work for another practice or start his own practice within 15 miles for a three year period. If Jones does, Filling's Family Dental could hold Jones liable for any losses suffered while competing with Jones.

North Carolina law requires employers to be reasonable. The covenants typically limit the duration (when) and space (where) in which former employees may work or start their own business after the job with the employer ends. The law is more likely not to uphold a covenant not to compete if the employment is the

employee's only or primary means of supporting his or her self and family in a profession.

Additionally, keep in mind that medical off-duty employments require additional steps. Refer to AFI 44-102, Medical Care Management, and MGI 44-18, Off-Duty Employment, for processing instructions.

CONCLUSION

Air Force members must complete an off-duty employment form (AF IMT 3902), have it reviewed by their supervisor and the Legal Office, and request that their commander approve it.

The safety and welfare of the member is the unit's primary concern.

If you have any questions relating to this pamphlet, please call us at 394-2341.



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This pamphlet is for basic information on off-duty employment. It is not intended to take the place of legal advice from a Judge Advocate. There may be important exceptions in some states to the information presented here. Please contact the 43 AMOG/JA Legal Office for questions and further information.