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A EMPLOYEE'S GUIDE TO

# Standards of Conduct

IN MONTANA STATE GOVERNMENT

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*March 2011*



State Human Resources Division  
Department of Administration

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## Introduction

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You are a state employee and your public duty is to work for the benefit of the people of the state. State statutes mandate your responsibility to the public. The Montana Code Annotated (MCA) 2-2-103 describes the holding of public employment as a “public trust” created by the confidence the public places in you.

Public trust and public duty are your guiding principles. If you or your private interests benefit by your work duties, you may have a conflict of interest. This guide should help you recognize when you may have a conflict of interest and identify your responsibilities.

If you have these guidelines in mind you should be able to avoid taking action against your public duty and violating the public’s trust in state government.

## Why have standards of conduct?

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The Montana Constitution, Article XIII, Section 4 prohibits conflict between employees’ private interest and their public duty. The Standards of Conduct are found in Title 2 – Chapter 2, MCA. The legislature may amend these rules. It is a good idea to review them from time to time. The statute’s purpose is to maintain the public trust in state government and to provide for penalties against those who violate that trust.’

## What can guide my conduct?

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You may begin with the State ethics policy. The State Human Resources Division, Department of Administration, developed the policy based on statutory standards of conduct. The policy can be found in the Montana Operations Manual (MOM #03-0180). A link to the policy is included in the reference section of this guide.

Each agency must adopt the state policy and may add rules and procedures specific to the agency. Please consult with your agency for any agency-specific requirements.

Next, this guide will help you understand the policies and statutes and how they might apply to you. It is your responsibility to make sure you

understand the standards of conduct and ethical principles which apply to you as you perform your job.

Some provision of the Standards of Conduct affect elected officials and local government employees. We did not include these provisions in this guide. You should contact your supervisor or agency human resources office for additional information.

Another good source of information is the Commissioner of Political Practices. The Commissioner issues information and rules about enforcement of the standards of conduct. The Commissioner's staff will try to answer questions but cannot issue advisory opinions on ethics in writing.

Other state policies also provide guidance to state employees. For example, state policies on the use of state provided computers, internet, telephones, vehicles, and procurement cards contain specific guidance to the standards of conduct relating to use of state equipment. Your agency may also provide additional guidance through agency-specific policies.

Criminal laws provide guidance and may cover some of the same kinds of behavior as described in the standards of conduct, under Title 45, Chapter 7, Offenses Against Public Administration. For example, threats and improper influence, bribery, compensation for past official action, gifts to public servants, and official misconduct are all covered.

Some professions and occupations, such as lawyers and engineers, have ethical standards to which those practicing the profession must adhere.

Finally, federal and state law and state policy guide your conduct with regard to discrimination, harassment and other treatment of your co-workers.

This guide addresses ethical violations set out in the standards of conduct. You must make yourself aware of all rules and policies guiding your behavior.

## Standards of Conduct

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Standards of conduct for public employees can be grouped into four major categories: gifts, self-dealing, unwarranted privileges, and use of public property for private purposes. We summarized the law for each category

below. The definitions set out in 2-2-102, MCA, may help you understand the rules.

**Gifts:** As a state employee, you may not accept a substantial gift or economic benefit (2-2-104(1)(b) and (2), MCA). Substantial gifts are generally valued at more than \$50. The statute defines “economic benefit” to include a loan with interest below market rate or compensation for your private services substantially above the market rate.

You should closely scrutinize gifts or economic benefits to determine if they are intended to exert improper influence or reward you for action you took. Acceptance of a gift or economic benefit intended as a bribe, regardless of value, could result in criminal penalties.

The definition of gift in 2-2-102, MCA excludes the following:

- a gift that is not used and is either returned to the donor within 30 days or donated to a charitable organization;
- food and beverage consumed while participating in a charitable, civic or community event which is related to your employment or that you are attending in an official capacity;
- educational materials directly related to your duties;
- an award presented publicly in recognition of public service; or
- educational activity that does not place or appear to place you under any obligation and is not lavish or extravagant.

Your agency may provide additional guidance on acceptance of gifts or economic benefits. Violation of this standard is proof that an employee has breached his public duty. Disclosure is not a defense.

**Self-Dealing:** As a state employee, you may not:

- disclose or use confidential information acquired in the course of your job for your personal economic interests (2-2-104(1)(a), MCA);
- acquire an interest in any business or undertaking you have reason to believe may be directly and substantially affected to its economic benefit by actions taken by your employing agency (2-2-105(2), MCA);
- perform an official act which directly and substantially harms a business when you have a substantial personal interest in a competing business (2-2-105(5), MCA);

- engage in a substantial financial transaction for your private business purposes with a person whom you inspect or supervise in the course of your official duties (2-2-121(2)(b), MCA);



If you are a member of a governing body, you may act if necessary to have a quorum but you must disclose the conflict of interest before performing the act.

- assist a person for a fee or other compensation in obtaining a contract, claim, license, or other economic benefit from your agency (2-2-121(2)(c), MCA);
- assist a person for a contingent fee in obtaining a contract, claim, license, or other economic benefit from an agency (2-2-121(2)(d), MCA); or
- perform an official act which directly and substantially provides an economic benefit to a business in which you have a substantial financial interest or for which you are engaged as a counsel, consultant, representative or agent (2-2-121(8), MCA).



If you are a department head or a member of a rule-making board, you may act if (1) your participation is necessary to the administration of a statute; and (2) you disclose the conflict to the Commissioner of Political Practices and for the record in the proceeding.

Each of these acts is a breach of public duty. Disclosure is not a defense, except as noted.

**Unwarranted Privileges:** As a state employee, you may not:

- engage in any activity, including lobbying, on behalf of an organization of which you are a member while performing your job duties ( 2-2-121(6), MCA);



You may participate in charitable fundraising activities if you have your supervisor's permission.

- participate in a proceeding before your agency that is within the scope of your job duties, or attempt to influence a local, state, or federal proceeding in which you represent the state, when an organization of which you are an officer or director is involved;
- obtain employment within 12 months following voluntary termination, taking advantage unavailable to others of matters with which you were directly involved. Such matters include rules which you helped formulate and applications, claims or contested cases in which you were actively involved; or
- contract or be employed within six months of termination by someone who contracts with the state involving matters with which you were directly involved during your employment with the state.



This does not apply to contracts awarded to the low bidder based on a competitive process or to merchandise sold to the highest bidder at public auction. This does not apply to you if you lost employment because of a reduction in force.

- receive two salaries as a public employee for work during overlapping hours, unless:
  1. if the duplicate pay for one job consists totally of accrued leave and/or compensatory time during the overlapping period;
  2. you reimburse the agency from which you are absent for the salary paid for time you were absent;. or
  3. your salary is reduced by one agency so that you are not compensated twice for the overlapping time.



Montana's Administrative Rules (44.10.601, ARM) require you report any overlapping hours to the Commissioner of Political Practices.

**Public Property for Private Business Purposes:** As a state employee you may not:

- use public time, facilities, equipment, supplies, personnel, or funds for private business purposes. This includes soliciting support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue unless authorized by law or properly incidental to another activity required or authorized by law. Additional guidance on what is allowable for state employees can be found in 2-2-121(3), MCA.

This rule is not intended to restrict your right to express your personal political views. However, you may not use public time or equipment to do so. (See, *Seher and Valazquez v. Galt* (7/26/04))



You may be listed in the electronic directory for Made In Montana products if the products are made outside of work and you do not make arrangement for the listing during work hours.

## Disclosure Requirements of the Law

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The law requires you to disclose certain information under specific circumstances. Your agency's policy may provide procedures for making required disclosures. Below are the disclosure requirements:

- You may not solicit or accept employment or engage in negotiations or meetings to consider employment with a person you regulate in your official duties, without first giving written notice to your supervisor or agency director.
- If you are a member of a quasi-judicial board or commission or a board, commission or committee with rulemaking authority and have a conflict created by a personal or private interest that gives rise to the appearance of impropriety, you must disclose the interest creating the conflict prior to participating in official actions.



- Prior to acting in a manner affecting your public duty, including the award of a permit, contract or license, you must disclose the nature of the private interest creating the conflict. This disclosure must be in writing to the Commissioner of Political Practices and must list the amount of private interest, the purpose and duration of your services, any compensation you have received and other relevant information. If you perform the act involved, you must state for the record the nature of the interest you disclosed.

## Enforcement of the Standards of Conduct

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Each agency is charged with enforcing the standards of conduct policy for employees and may take disciplinary action to enforce the policy. Each agency must also conduct employee ethics education at least every three years. Employees are also required to read this guide and the ethics policy every three years.

You must sign a statement acknowledging you read this guide and ethics policy and affirm your agreement to abide by the policy. You should understand what is required of you and ask your supervisor if you have a situation that concerns you.

The Commissioner of Political Practices is responsible for investigating and enforcing the Standards of Conduct when complaints are received by that office. The commissioner does not have jurisdiction over a complaint about a legislator or local government employees except the county attorney. However, the following actions and penalties are possible:

- Any person alleging a violation may file a complaint with the Commissioner of Political Practices. If the Commissioner accepts the complaint for investigation, the Commissioner will hold an informal contested case hearing and issue a decision.
- Proof of commission of unlawful acts outlined in the Standards of Conduct and Code of Ethics is proof the employee has breached his or her public duty.
- If the Commissioner determines a violation has occurred, an administrative penalty of not less than \$50 or more than \$1,000 may

be imposed along with the costs of the proceeding. If the violation is by a state employee, the Commissioner may also recommend disciplinary action by the employing agency.

- If the Commissioner determines a violation did not occur, costs for the proceedings may be assessed against the person bringing the complaint.
- Judicial review of commissioner decisions is through the state District Court.

## Closing

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Two main principles apply to your conduct in your job: public trust and public duty. Whenever you consider using state property or time or your position as a state employee to benefit yourself or your business, think twice. By keeping these rules in mind as you do your job, you will be able to carry out your duties for the benefit of the people of the state and avoid taking actions, which would cause you to depart from your public duty and violate the public's trust.

*For additional information, contact your supervisor or your agency human resources office.*

## Resources

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State Ethics Policy (MOM #03-0180)

<http://hr.mt.gov/content/hrpp/docs/Policies/MOM/Ethics>

Commissioner of Political Practices Ethics Decisions,

<http://politicalpractices.mt.gov/2recentdecisions/ethics.mcpX>

Professional Development Center, *State Ethics Law*, offered quarterly.

Montana Codes Annotated, Title 2, Chapter 2, Standards of Conduct:

Code of Ethics

2-2-101      Statement of purpose

Original Publication:      March    2011  
Revised:                      March    2011

2-2-102	Definitions
2-2-103	Public trust -- public duty
2-2-104	Rules of conduct for public officers, legislators, and public employees
2-2-105	Ethical requirements for public officers and employees
2-2-106	Disclosure
2-2-111	Rules of conduct for legislators
2-2-112	Ethical requirements for legislators
2-2-121	Rules of conduct for public officers and public employees
2-2-131	Disclosure
2-2-135	Ethics committees
2-2-136	Enforcement for state officers, legislators and state employees –referral of complaint involving county attorney
2-2-144	Enforcement for local government

#### Proscribed Acts Related to Contracts and Claims

2-2-201	Public officers, employees, and former employees not to have interest in contract -- local government waiver
2-2-202	Public officers not to have interest in sales or purchases
2-2-203	Voidable contracts
2-2-204	Dealings in warrants and other claims prohibited
2-2-205	Affidavit to be required by auditing officers
2-2-206	Officers not to pay illegal warrant
2-2-207	Settlements to be withheld on affidavit

#### Nepotism

2-2-301	Nepotism defined
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**We designed this guide to assist executive branch human resource professionals, supervisors, and managers in understanding the standards of conduct requirements. It is a companion to information contained in statute and policy.**

Alternative formats may be obtained through the State Human Resources Division, Department of Administration, 125 N. Roberts St., PO Box 200127, Helena, MT 59620-0127. Telephone 406-444-3871. Those using a TTY may call the Montana Relay Service at 711.