

Chapter 13 – Employment Restrictions After Leaving the Military

Post Government (Military) Service Employment Restriction Counseling should be completed during your demobilization/deactivation. You will be informed about this requirement when completing your DD Form 2648-1, “Preseparation Counseling Checklist for Eligible Demobilizing Members of the Guard and Reserve.”

You will be given specific information on post military employment restrictions. Transition/ACAP or Command Career Counselors will arrange for an installation legal office (Staff Judge Advocate or Counselor's Office), or qualified ethics official to brief you on post government (military) employment restrictions before your release from active duty.

Additional information about employment restrictions after leaving the military is provided below.

A. Personal Lifetime Ban

SIMPLIFIED RULE: After you leave Government service, you may not represent someone else to the Government regarding **particular matters** that you worked on while in Government service.

RULE: Former service members may not knowingly make a communication or appearance on behalf of any other person, with the intent to influence, before any officer or employee of any Federal agency or court in connection with a **particular matter** in which the officer or employee *personally and substantially* participated, which involved a *specific party* at the time of the participation and representation, and in which the U.S. is a party or has a direct and substantial interest. (18 U.S.C. 207(a) (1)) **This rule does not apply to former military enlisted personnel.**

B. Official Responsibility 2 Year Ban

SIMPLIFIED RULE: For 2 years after leaving Government service, you may not represent someone else to the Government regarding *particular matters* that you did not work on yourself, but were **pending under your responsibility** during your last year of Government service.

RULE: For a period of 2 years after termination of Government service, former Government officers and employees may not knowingly make a communication or appearance on behalf of any other person, with the intent to influence, before any officer or employee of any Federal agency or court, in connection with a particular matter which the employee reasonably should have known was actually pending under his or her *official responsibility* within 1 year before the employee left Government service, which involved a specific party at that time, and in which the U.S. is a party or has a direct and substantial interest. (18 U.S.C. 207(a) (2)) (This rule does not apply to former military enlisted personnel.)

C. Trade or Treaty 1 Year Ban

SIMPLIFIED RULE: For 1 year after leaving Government service, you may not aid, advise, or represent someone else regarding trade or treaty negotiations that you worked on during your last year of Government service.

RULE: For a period of 1 year after leaving Government service, former employees or officers may not knowingly represent, aid, or advise someone else on the basis of *covered information*, concerning any ongoing *trade or treaty negotiation* in which the employee participated personally and substantially in his last year of Government service. (18 U.S.C. 207(b)) (This rule does not apply to former military enlisted personnel.)

D. Compensation for Representation to the Government By Others

RULE: After you leave Government service, you may not accept compensation for representational services, which were provided by anyone while you were a Government employee, before a Federal agency or court regarding particular matters in which the Government was a party or had a substantial interest. This prohibition may affect personnel who leave the Government and share in the proceeds of the partnership or business for representational services that occurred before the employee terminated Federal service. (Examples: Lobbying, consulting, and law firms). (18 U.S.C. 203). (This rule does not apply to former enlisted military personnel.)

E. Additional Restrictions for Retired Military Personnel and Reservists

SIMPLIFIED RULE: Foreign Employment - Unless you receive prior authorization from your Service Secretary and the Secretary of State, you may forfeit your military pay during the time you perform services for a foreign government.

RULE: The U.S. Constitution prohibits retired military personnel and reservists from receiving pay from *foreign governments* without Congressional authorization. This can extend to receipt of pay from a U.S. contractor or subcontractor for providing services to a foreign government. In 37 U.S.C. 908, Congress authorizes the Secretary of State and Secretary of the appropriate Military Department to approve such receipt of pay. Each military service has implementing directives. Retired personnel and reservists who violate this Constitutional proscription may forfeit pay equal in amount to their foreign pay.

Employment By DoD: To avoid the appearance of favoritism, 5 U.S.C. 3326 prohibits the appointment of retired military personnel to civil service positions (including a non-appropriated fund activity) in any DoD component for 6 months after retirement. **(This restriction has been temporarily waived during the current national emergency following the attacks of 9/11).**

The Secretary concerned may waive this prohibition. However, DoD Directive 1402.1 requires the Secretary concerned to conduct intensive external recruitment before granting the waiver.

F. Employment During Terminal Leave

Holding a civil office in state or local government: While on active duty (including terminal leave) military *officers* are prohibited by 10 U.S.C. 973(b) from holding a "civil office" with a state or local government.

Civilian position in the U.S. Government: Military personnel on terminal leave are authorized to accept a civilian position in the U.S. Government and receive the pay and allowances of that position as well as their military pay and allowances. (5 U.S.C. 5534a)

Note: Please remember that while on terminal leave, you are still an active-duty service member, and the restrictions that apply to you while on active duty still apply. For example: Restrictions on political activities.

Outside employment: If you are currently required to obtain permission prior to engaging in outside employment, that requirement will most likely carry over to you during terminal leave. Check with your supervisor.

Restriction on representing others to the Federal Government: You may not represent anybody outside the Government to the Government on any particular matter involving the Government. Military officers working on terminal leave (like all Federal employees) are prohibited by [18 USC 205](#) and [18 USC 203](#) from representing their new employer to the Government. In almost every case, this precludes a member from interacting or appearing in the Federal workplace as a contractor. Being present in

Government offices on behalf of a contractor inherently is a representation. Of course, military officers on terminal leave may begin work with the contractor, but only "behind the scenes" at a contractor office or otherwise away from the Government workplace. **Enlisted members are not subject to 18 USC 203 or 205.**

Prohibition on working for a foreign principal: Over and above the restriction of receiving compensation from a foreign government, there is also a specific prohibition of a public official from being or acting as an agent of a foreign principal required to register under the Foreign Agents Registration Act of 1938 (expanding the restriction beyond foreign governments to include persons, partnerships, and corporations (18 U.S.C. 219).