

DST POLICIES AND PROCEDURES

DST Reference:	OST-POL-5019-ALL
Title:	Supplemental Ethics Policy (Tier 2 Policy)
Chapter:	Legal
Current Effective Date:	January 26, 2022
Original Effective Date:	November 15, 2019

FAQs for Supplemental Ethics Policy (Tier 2 Ethics Policy)

1. What is meant by an appearance of a Conflict of Interest?

See FAQs for the [Ethics and Conduct Policy \(Tier 1\)](#) for more information.

2. What is meant by a potential Conflict of Interest?

See FAQs for the [Ethics and Conduct Policy \(Tier 1\)](#) for more information.

3. What is meant by a “substantive discussion concerning employment” as used in the Tier 2 Ethics Policy?

A substantive discussion concerning employment occurs when the details or specifics of a potential job are discussed including the qualifications needed for the job, salary, benefits, experience, and qualifications of the Tier 2 Employee for the job or potential start date. A formal interview is not required for a substantive discussion concerning employment to have occurred. If, after a substantive discussion concerning employment; the DST employee is forced to pause and consider the potential job as a possibility for employment, the DST employee MUST recuse himself or herself from any DST matters involving the potential employer. The recusal must last until the DST employee rejects the possibility of employment. Simply sending a resume to a potential employer through a regular application process is not a “discussion.” Speaking generally with a colleague at a social event about employment opportunities is not considered “substantive.”

A “substantive discussion” is one that gives the DST employee “something to think about” with respect to the potential employment opportunity that may result in the employee leaving DST. If there is a substantive discussion about the details of a potential job but the DST employee has nothing further to consider because there is no likelihood the DST employee will take the job then recusal is not necessary as the DST employee has effectively rejected the potential employment.

4. If recusal is necessary due to a Conflict of Interest that involves a current Vendor, can I still work with the Vendor?

If recusal is necessary due to a Conflict of Interest (for example arising from a substantive discussion about potential employment or any other personal or familial Conflict of Interest) you may be recused from participating in any decision making, assessment, evaluation or other discretionary action or matters involving the Vendor, including discussions that may affect the Vendor or a Proposed Vendor’s relationship with DST. Continuing to utilize the Vendor’s goods or services as needed to perform job duties (i.e. utilizing software, databases or other information provided by the Vendor) is otherwise permissible.

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5. As a Tier 2 Employee, can I offer items for purchase that would benefit organizations seeking to raise money or otherwise being sold for a charitable purpose?

Tier 2 Employees cannot solicit for a charitable purpose anything of monetary value from any subordinate State employee. This prohibition is not limited to purely monetary donations but extends to situations where items are offered for purchase as a fundraiser for a charitable or other non-profit organization (for example Girl Scout cookies being sold to benefit the Girl Scouts or other items being sold to benefit an organization). This prohibition does not apply if the solicitation is made to “all members of a class of subordinates” (i.e. within a Department of the State Treasurer).

The State Ethics Act (N.C. Gen. Stat. § 138A-32(b)) states “covered persons may not solicit for a charitable purpose anything of monetary value from any subordinate State employee.” That same section provides the exception for “generic written solicitations [that are sent] to all members of a class of subordinates.” This Ethics Act provision is designed to ensure that a manager does not use his/her supervisory authority to cause subordinate employees to purchase such items or make charitable donations. The Supplemental Ethics Policy extends this charitable solicitation prohibition to certain non-covered employees; therefore; all Tier 2 Employees are precluded from soliciting anything of monetary value from subordinate employees unless the solicitation is made to an entire class of subordinates.

6. What is meant by “represent (take action on behalf of) a Vendor or Proposed Vendor” before DST under Section VI.D.1(b)i)?

Section VI.D.1(b).i. of the Employment by Vendor “Cooling Off” Period restricts a Tier 2 Employee from representing (taking on action on behalf of) a Vendor or Proposed Vendor for compensation “before the Department or the Treasurer” for a period of twelve-months after leaving their position with DST.

“Representing” (“taking action on behalf of”) a Vendor or Proposed Vendor can mean the Tier 2 Employee would be advocating, promoting, pitching, sponsoring, or otherwise taking any action whatsoever regarding a particular matter for the Vendor or Proposed Vendor.

“Before the Department or the Treasurer” means the Tier 2 Employee would be physically or in written materials coming before the Treasurer or appearing before a division of DST (i.e. during a board meeting, through a presentation to staff, through submission of written materials to staff or the Treasurer) seeking to have the Treasurer or the division take some action that (usually) benefits the Vendor or Proposed Vendor.

7. What is meant by “approving performance under the terms of a contract” under Section VI.D. 1(b).ii.b. Employment by Vendor?

Section VI.D.1(b).ii.b. of the Employment by Vendor “Cooling Off” Period restricts employment with a Vendor or a Proposed Vendor for twelve months after leaving DST, if, within the preceding twelve months the Tier 2 Employee was responsible for “approving performance under the terms of a contract.” A Tier 2 Employee may be considered to have engaged in “approving performance under the terms of a contract” where the Tier 2 Employee was engaged in or responsible for the following:

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- day-to-day monitoring of Vendor performance, including ensuring deliverables or other obligations are met;
- receiving or reviewing periodic evaluation reports of Vendor performance;
- plotting or tracking critical contract performance milestones required of a Vendor;
- determining that a Vendor’s performance or delivery was unsatisfactory;
- developing or overseeing a corrective action plan to deal with any contract issues arising between a Vendor and DST;
- escalating unsatisfactory performance or causing a complaint form to be issued, a notice to cure letter, a termination letter or other similar correspondence to be issued to the Vendor;
- approving progress payments to a Vendor (i.e. payments made when stages of a contract are satisfactorily completed);
- determining that a Vendor has satisfactorily performed all required contractual obligations, including that all deliverables have been received timely, accurately and in the prescribed manner;
- effectuating any other action to cause performance by the Vendor or otherwise effect the relationship between DST and the Vendor.

Tier 2 Employees who approve performance under a contract can include:

- the business owners of a contract [see *Procurement and Contract Policy* [FOD-POL-9010-ALL];
- supervisors, managers or division directors;
- other staff with the ability to cause the Department or division to take some action regarding the contract (either positive or negative) as a result of that Tier 2 Employee’s input or reasoning.

8. What is meant by “side-switching?”

Section VI.D.2 of the Policy includes a second type of employment limitation. This section says, “A Tier 2 Employee shall **never** represent (take action on behalf of) or render any form of compensated services for any person or entity regarding a particular matter, issue, or controversy in which he or she was personally and substantially involved while employed by the Department and in which the Department continues to have a substantial interest.”

This provision is designed to prevent side-switching in the midst of on-going Department proceedings and attaches to the Tier 2 Employee for life unless a waiver is obtained. The analysis of whether the “side-switching” provision is triggered is a very fact-specific analysis as to any given situation. The key phrases of this restriction are underlined above and discussed further below:¹

¹ Guidance for explanations and examples related to the “side-switching” provision was taken from the Connecticut Office of State Ethics’ rules and regulations and its various advisory opinions.

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- A “**particular matter, issue, or controversy:**”² A matter will be considered a “particular matter” when it is a single, definite or specific issue versus a general or universal matter. Examples of “particular matters” can include:
 - a disciplinary case involving a state employee
 - a contract
 - an investigation
 - a court or administrative proceeding
 - ongoing litigationGenerally, applying current statutes and regulations are not considered “particular matters.”
- Was “**personally and substantially involved:**” A Tier 2 Employee can be considered to have been “personally and substantially involved” where the employee’s “participation was direct, extensive and substantive, not peripheral, clerical or ministerial.”³ Substantial participation may include the following characteristics:⁴
 - participation that is of significance to the matter;
 - participation by an employee may be considered substantial even though it is not determinative of the outcome of a particular matter;
 - participation can be based not only on the effort devoted to the matter, but also on the importance of the effort;
 - a series of peripheral involvements may be insubstantial, while the single act of approving participating in a critical step may be substantial.
- In which the “**Department continues to have a substantial interest:**”⁵ The Department may be considered to have a “substantial interest” in matters where the finances, health, safety, welfare of the Department, or one or more of its beneficiaries or the citizen of North Carolina will be substantively affected by the outcome.

² Conn. Office of State Ethics Advisory Opinion 2010-1.

³ See Conn. Agencies Regs. § 1-81-32 (2008); Conn. Office of State Ethics Advisory Opinion 2014-7.

⁴ See Conn. Office of State Ethics Advisory Opinion 2014-7.

⁵ See Conn. Agencies Regs. § 1-81-35 (2008).