

Unclassified

GOV/PGC/ETH(2006)4/ANN



Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development

24-Jan-2006

English text only

**PUBLIC GOVERNANCE AND TERRITORIAL DEVELOPMENT DIRECTORATE
PUBLIC GOVERNANCE COMMITTEE**

GOV/PGC/ETH(2006)4/ANN
Unclassified

NORWEGIAN ETHICAL GUIDELINES AND POST EMPLOYMENT GUIDELINES

Expert Meeting on Conflict of Interest in the Public Service

**26-27 January 2006
Château de la Muette, Paris**

This document provides the texts of the recently adopted Guidelines in Norway on:

*Ethical Guidelines for the Public Service;
Post-Employment Guidelines for Politicians;
Post-Employment Guidelines for Public Service.*

For further information, please contact János Bertók, E-mail: janos.bertok@oecd.org;
Tel: +22 1 45 24 93 57; Fax: +33 1 45 24 85 63.

JT00200200

Document complet disponible sur OLIS dans son format d'origine
Complete document available on OLIS in its original format

English text only



Ethical Guidelines for the Public Service

The Ministry of Modernisation, 7 September 2005

Foreword

High ethical standards for the provision of services and the exercise of authority are a prerequisite if the citizenry is to trust the public service. The goal of these general ethical guidelines is to ensure that all State employees are aware of this. The ethical guidelines are to be of a general nature, rather than providing detailed rules. They are intended to be general guidelines that call for reflection on the part of the individual employee. The provisions enshrined in them are not always exact, but rather specify legal standards.

The guidelines have evolved from ethical values and norms of universal validity such as justice, loyalty, honesty, reliability, truthfulness and the golden 'do unto others' rule.

Norway has many rules of law (statutory and non-statutory) that impact values and ethics in the public service. The ethical standards that apply at any given time have an impact on the framing of legislation and other regulations. From this perspective, these guidelines complement the existing rules of law. Some current rules of law are discussed in more detail under the section "Relationship to legislation and regulations".

The scope of the guidelines, and local responsibility

The guidelines shall generally apply to the entire public service, implying that all State government bodies are subject to them. State-owned enterprises and other state enterprises and institutions must consider the need for introducing their own ethical guidelines.

The Ministry of Modernisation requires that each individual organisation applies the guidelines to further develop and improve ethical awareness among its employees, thus establishing a firm foundation for managers and employees to engage in ethical reflection.

Each individual organisation must review whether it needs to supplement the guidelines, based on the individual organisation's requirements.

Consideration for the employees and the protection of a good working environment are discussed under several sections of the guidelines. It is important that employees have professional and personal development opportunities and that individuals' needs be taken into account when work is organised. Consideration for employees will be embodied in an organisation's personnel policy, but the individual organisation must also be prepared to supplement the general ethical guidelines in this area.

Behaviour or actions at variance with the general ethical guidelines do not carry special sanctions, but breaches of the provisions that apply to conflicts of interest, for example, could result in a decision being declared invalid. An act or failure to act in the service could be considered dereliction of duty, and could lead to service sanctions. An act or failure to act in the service could also be so gross that it could lead to prosecution and punitive reactions. Clear-cut breaches of statutory provisions will ordinarily also constitute breaches of ethical and administrative guidelines of universal validity.

Even if a service-capacity act or failure to act does not entail a clear-cut breach of laws or formal regulations, it can be brought to bear in a personnel case if it entails a breach of ethical guidelines. Given that the ethical guidelines have been made known throughout an organisation, not least to individuals, breaches of the guidelines will be a factor that can be emphasised, for example, in an overall assessment of the relevant public official's suitability for a position or in connection with an internal application for a new position, where it is fair to require compliance with the organisation's ethical guidelines.

Employers, managers and employees

As an employer (represented by the Ministry of Modernisation), the State bears the ultimate responsibility for providing ethical guidelines and ensuring compliance. Top management in ministries and subordinate organisations bears special responsibility for follow up. This is primarily because managers, through their words, actions and management style, exert a strong influence on the culture and standards of conduct that apply in an organisation. Secondly, it is because top managers can be put in situations where choices and decisions call for ethical reflection and wisdom. Thirdly, it is because top managers are responsible for ensuring that the entire organisation is aware of the ethical standards that apply, and for ensuring that the organisation addresses any breaches of laws or regulations immediately in order to avoid the emergence of unfortunate customs or culture.

Individual employees are required to familiarise themselves with the provisions and instructions that apply to their positions at any given time, and they are personally responsible for the best possible compliance with the guidelines.

The structure of the document

The guidelines *per se* are highlighted in grey boxes in this document, while the accompanying text comprises the Ministry of Modernisation's comments to the individual guidelines. The introduction to each main section includes comments on its key points.

The guidelines generally use the concept 'citizenry', also where it might be natural to use concepts such as citizen, audience, customer or user.

Ethical Guidelines for the Public Service

1. General provisions

Public officials shall be guided by ethical and administrative values and norms of universal validity. Each employee bears individual, independent responsibility for contributing to the confidence and prestige accruing to his or her organisation. State employees shall neither let their own self-interests affect the way in which they deal with cases or other work, nor let consideration for their own or their organisation's convenience or prestige affect their actions or decisions.

1.1 Concern for the citizenry

As the exerciser of authority, provider of services and steward of significant social resources, the central government administration and thus the individual employee

- is obligated to consider the public interest, to strive to achieve equal treatment and to treat individuals with respect.

Comments:

Upon performing the duties of office, especially in exercising administrative authority, a balance will often have to be struck between general social considerations, protecting the principles of government for the citizenry (e.g. legal safeguards) and the individual citizen's special interests. First and foremost, we must bear in mind that the Public Service exists to serve the citizenry.

In both the exercise of authority and the provision of services, each and every public official shall be considerate, friendly, polite, correct and accommodating to the public in written as well as verbal communication. This applies even when the other party does not maintain the same decorum.

All communication must be worded so that it is easily understood by the recipients.

All legislation and regulation provisions about confidentiality and the protection of privacy shall be observed. An individual public official shall always respect an individual citizen's personal integrity.

It is important to be aware of the needs, values, norms and expectations of members of ethnic minorities, both in communication and in the wording of administrative decisions and the delivery of services.

1.2 Regard for the State's reputation

The individual employee is required to perform his or her duties and behave in an ethical manner, and thus avoid damaging the State's reputation.

Comments:

Whether the public official is acting in his or her own organisation, in other public or private organisations in Norway or abroad, the person in question will first and foremost be perceived as a representative of his/her employer, as well as of the State as a whole. The last phrase applies in particular when the person in question is acting in an official capacity abroad or receives foreign nationals on official visits to Norway. It is important in every context to understand other countries' cultures, religions and political systems. Reference is also made to Sections 4.5 and 4.6 on accepting and being offered gifts and other emoluments.

Further, reference is made to the ethical guidelines pertaining to the sale or acceptance of sexual services (State Personnel Handbook 2005, Section. 2.6.11). These guidelines emphasise that an employee should not behave in a manner that can infringe on human dignity or that lends itself to discrediting the organisation or Norway. This entails that an employee on assignment for the State in Norway or abroad shall abstain from the buying, etc. of sexual services.

2. Loyalty

The duty of loyalty is a common contractual principle, and it ensues from the employment relationship that there is a reciprocal duty of loyalty between employee and employer. Employees' duty of loyalty implies that employees must behave in the public interest. Among other things, employees shall not groundlessly discuss their employer or the public service in negative terms. For its part, the employer shall ensure that employees' interests are safeguarded insofar as possible, and managers bear special responsibility for helping protect employees that disclose and report wrongdoing.

2.1 Duty of obedience

Public officials are required to comply with the legal rules and ethical guidelines that apply to the activities, as well as to follow orders issued by superiors. The duty of obedience entails no obligation to follow orders to do anything illegal or unethical.

Comments:

It follows from the duty of loyalty that public officials should raise the necessary objections before a decision is taken, meaning the preparatory proceedings must present the most comprehensive possible picture of relevant considerations and values. Once a decision is taken, it also follows clearly from the duty of obedience that the decision shall be implemented swiftly and efficiently within the established parameters, regardless of the public officials' professional and political views of the decision.

Public officials shall not assist administrative superiors or the political leadership of the ministries by giving incorrect or misleading information to the media or the general public. The duty of obedience carries no obligation for employees in the State administration to perform duties beyond what would be considered the sphere of the minister's official duties, e.g. to prepare election campaign material for those holding political office, or by other means to contribute directly to the activities of political parties.

Public officials shall not have contact with parliamentary committees or committee fractions without this being cleared with the ministry in charge, nor are they to order anyone else to act on behalf of the organisation. The Storting and its committees and committee fractions must nevertheless be able to question public officials by virtue of their special knowledge and expertise, without the sectoral ministry in question having to clarify which experts the Storting would like to call in.

Employees' freedom of expression must be assessed relative to the duty of loyalty to the organisation. It is important that public officials take part in an open, independent and comprehensive dialogue on social issues, but the duty of loyalty implies that a public official may have somewhat less latitude in the right to express opinions in his or her own field of expertise than in other areas. To avoid a public official's personal opinions from being perceived as an expression of an organisation's point of view, an employee who makes statements in an organisation's sphere of responsibility must always point out that the statements are personal opinions.

2.2 Duty to report

In order to implement measures to avoid or limit losses or damages, public officials are required to report to their employer any circumstances of which she or he is aware that could cause the employer, employee or the surroundings to suffer losses or damages.

Comments:

Breaches or well-founded suspicions of breaches of safety regulations or other factors that endanger the life or health of employees or the general public are examples of actions and circumstances that should be reported. The same applies to corruption and crimes or irregularities. As regards corruption, it will be especially important to provide the most accurate and comprehensive information possible about the giver and receiver of bribes, cf. General Civil Penal Code § 276 a, 276 b and 276 c. Under the circumstances, one viable alternative to in-house notification might be to contact the police or the supervision or inspection authorities. This will not normally be perceived as a breach of the duty of loyalty, cf. Section 3.4.

The expression 'other irregularities' indicates that the situation must be of a certain severity and in this context 'gossip' should not be encouraged. How an enterprise's employees should react, for example, to colleagues' bad behaviour towards other colleagues, clients or users in general, is a question that must be clarified through internal dialogue, possibly by issuing special guidelines in the individual organisation.

Reports shall normally be made to one's immediate superior, who is responsible for dealing with the matter further. If the employee finds it difficult to go to his or her immediate superior, he or she should report to another superior. See also Section 3.4.

Managers bear a special responsibility for seeing to it that employees who in good faith report unlawful or unethical situations or acts, or well-founded suspicions regarding same, are not subjected to reprisals or the like by their employer or colleagues.

2.3 Duty of efficiency

Public officials are required to use and preserve the State's resources in the most economical and rational manner possible, and shall not abuse or waste the State's funds. Reaching the established targets in a good and efficient manner requires striking a balance between efficiency and the use of resources, thoroughness, quality and good administrative practice.

Comments:

Naturally, the concept "State funds" extends beyond budgetary resources, encompassing everything from buildings, vehicles and machinery to office supplies and electronic services. In this connection, it might be natural to refer to the fact that the State has relevant regulations that apply to travel, procurement, food and drink, etc.

The duty of efficiency cannot be assessed separately from other considerations the public service must take when discharging its authority. Swift and efficient production and goal achievement must be weighed against quality and thoroughness, cf. here the Public Administration Act's rules and the unwritten rules for good administrative practice. Requirements for efficiency, thoroughness and quality might vary in different fields. Generally, we must, however, be justified in saying that the more radical an administrative decision is for a party or for a larger group, the higher the standards that must be set for thoroughness and quality. The quest for efficiency must not preclude the recognition of important administrative principles.

The duty of efficiency must also be seen in the light of aspirations regarding an inclusive working life. Employees, and in particular managers, are responsible for counteracting exclusion in working life, and for building health-promoting workplaces and preventing stress and burn out.

3. Transparency

The State administration must practise transparency externally in respect of the citizenry as well as within its own ranks and between the different administrative branches. This is a prerequisite for the general public's trust in the public service, and counteracts reproachable behaviour and a lack of culture. Freedom of information and frank discussion are essential for a smoothly-functioning democracy. There is a correlation between the requirement for transparency and loyalty and the obligation to report wrongdoing. To get a general idea of how far the duty to report extends, for example, specific questions must be considered in the light of the requirement for transparency and loyalty, implying that the final answers and any dilemmas that arise will vary from case to case.

3.1 Freedom of information

There should be openness and transparency throughout the administration so that the general public can understand the State's activities, and thus gain insight into how the State attends to its responsibilities.

Comments:

The most important statutory provisions in this context are in the Freedom of Information Act's regulations on transparency and public disclosure. Compliance is mandatory not only with the wording of the provisions, but also with the spirit of the provisions. The provisions ought to be practised as transparently as possible. Consideration for an organisation's reputation will, for example, not be accepted as an argument to support non-disclosure.

3.2 Active duty of disclosure

The State has an active duty of disclosure. Public officials should always provide correct and adequate information, whether to other authorities, companies, organisations or the citizenry. In certain contexts, this will mean that one should, of one's own volition, disclose information of significance needed for the processing of a case.

Comments:

The active duty of disclosure is intended to support citizens' participation in democracy, as well as to accommodate different groups' need for information about their duties, rights and possibilities. The

information must be correct as well as adequate. This means that important information must not be held back, neither for the sake of convenience nor for other reasons.

Neither administrative nor political superiors shall order or urge subordinates to provide incorrect or misleading information. It is a right, and in some cases it ensues from the duty of loyalty, that a subordinate can bring a matter to the attention of his or her superior. In some cases, it can be right for a public official to go outside the organisation with knowledge or suspicions of incorrect or misleading information that has been given. Otherwise, please see Section 2.2 on reporting and Section 3.4 on notification.

3.3 Employees' freedom of expression

Like everyone else, public officials enjoy a fundamental right to express critical opinions about the State's activities and all other matters.

Comments:

Freedom of expression is a fundamental human right that rests on weighty considerations for society and individuals. Public officials enjoy the same basic freedom of expression as any other citizen, cf. §100 of Norway's Constitution. This also applies to fields directly related to the organisation in which a public official works. Owing to the general public's right to insight and information, it is important that public officials, given their expertise, be entitled to cast a critical, competent perspective on the social debate. Public officials must also have the opportunity to express opinions in their own fields of expertise, even though their duty of loyalty to their organisation may place some constraints on their freedom of expression. The quality of the public debate would suffer if those who work specifically with the cases in question were not allowed, or did not want, to participate in the debate.

The employer shall lay the foundation for a culture in the workplace that ensures that relevant information – including critical opinions – reaches the correct level internally, and that there is broad acceptance for employees to participate in the public debate based on a liberal interpretation of the concept of loyalty. Any restriction on the freedom of expression must be specially justified. Employees' duty of loyalty to their organisation can constitute such special justification. As a point of departure, only statements that could potentially damage the organisation's interests can be limited based on the duty of loyalty. Any restriction on an employee's freedom of expression must be both relevant and fair in the individual case, and the restrictions must extend no further than necessary.

The job or position of the person who makes a statement will also be a factor in deciding whether a statement should be considered a breach of the duty of loyalty to the organisation. The higher the position of the person in question, the stricter the duty of loyalty will be. In the event the person who makes the statement could be perceived as representing the organisation, it is important to make it clear that the statement is the person's personal opinion. As regards ministry employees, the closer the employee is to the political leadership, the more caution he or she must exercise to ensure that the civil service does not publicly express opinions that run counter to those of their own cabinet minister.

For employees of universities, university colleges and research institutions, part of their job is to contribute to the social debate, to express expert opinions, etc. Although employees at these institutions also have a duty of loyalty, their responsibilities include contributing to critical debate. Moreover, by virtue of their positions, the employees have an obligation to perform research and communicate their results, meaning they have the right and obligation to make their research results known even if they run counter to adopted policy.

Although there must be certain limitations ensuing from the duty of loyalty, public officials, like other members of society, should be encouraged to participate in the public debate. The fact that an organisation has appointed a spokesperson does not mean the other employees are subject to a gag order. However, it must be completely clear when a public official is expressing his or her own personal opinion and is not speaking on behalf of the public service. When this is managed prudently, neither the employer nor colleagues should cause difficulties of any kind for a person who publicly expresses a critical opinion about the public service in general or their own organisation in particular.

Shop stewards are in a special situation since it is their job to defend employees' interests. This can mean that it would take more before statements made by a union representative are considered to breach the duty of loyalty when the person in question is acting as a union representative.

3.4 Whistleblowing

Public officials must be able to report circumstances in the public service that are worthy of criticism. Before a report is filed, an attempt should be made to sort the matter out in-house.

Comments:

The principles of transparency and the citizenry's scrutiny of the public service require that the general public has insight into circumstances worthy of criticism in the public service. In some cases, this means that public officials must be able to give the general public factual information about matters involving wrongdoing. As pointed out in Section 3. Transparency, the question of the right to provide information to the general public is also considered in the light of considerations to loyalty and the duty to report (in-house) about situations in the organisation involving actual or suspected wrongdoing.

Experience from Norway and other countries indicates that although whistleblowing is applauded by the public and considered beneficial to society, it can be a great burden for the whistleblower him- or herself, not least in his or her relations with colleagues and superiors. Accordingly, it is important to point out that those thinking about reporting a situation they consider to be serious should ask themselves about their motive for whistleblowing and whether, objectively speaking, the situation must be deemed serious. The individual should also consider whether or not it is possible to deal with the case in-house. One alternative to going to the media might be to contact a public field office or inspection authorities about the matter. This would not ordinarily be perceived as a breach of the duty of loyalty.

Although whistleblowing can place a heavy burden on the individual, the introduction of guidelines for whistleblowing and the provisions in the Working Environment Act for protecting the whistleblower could in themselves improve routines for internal reporting and direct more focus towards quality assurance work.

A whistleblower's warning must be motivated by a desire to improve the situation in the workplace, to inform the citizenry about conditions in the organisation, or to promote the interests of users, the organisation or society.

An employee should ordinarily contact his or her superior before going public with criticism. However, it is not always possible to go to one's superior first. There may, for example, be suspicions of criminal offences committed by leadership. In such a situation, it will usually suffice to report the matter to the police. Any statements should have the actual facts straight. Here, it will be sufficient if the employee has done what he or she can to put the true facts on the table.

4. Confidence in the public service

To preserve and enhance the general public's confidence in the public service, it is especially important that decisions not be influenced by extraneous factors.

Norway's most important rules for ensuring trust in the public service are the competency rules in §6 of the Public Administration Act. In addition, we have rules relating to second jobs, temporary disqualification provisions in connection with the transition to another job and a ban on accepting gifts in one's professional capacity. Collectively, these rules cover different aspects by ensuring that public officials are not swayed by subjective considerations, and that the State's interests and trust in the public service are maintained intact.

4.1 Impartiality

Public officials shall not behave in a manner that might impair faith in their impartiality.

Comments:

Reference is made to §6, first and second subsections, of the Public Administration Act. The first subsection establishes that a public official is disqualified from preparing a decision or from making any decision in an administrative case, inter alia, when he or she personally or his or her family is a party to the case, or when he or she is a representative of a party to the case.

It is especially important to be aware of the considerations that must be taken into account under the second subsection, which states that a public official is disqualified when circumstances exist that could impair trust in his impartiality. Emphasis should be attached inter alia to whether the decision in the case may entail any special advantage, loss or inconvenience for him or her personally or for anyone with whom he or she has a close personal affiliation.

The individual is personally responsible for disqualifying him- or herself, and for stepping aside when a case so requires.

Certain combinations of roles could lead to conflicts of interest, or allegations of conflicts, raising questions about a public official's independence and integrity. This can, for example, apply when public officials in the central government administration serve on boards and committees, etc. It is therefore important to avoid combinations of roles that involve frequent disqualification.

4.2 Outside and second jobs

A public official cannot have outside or second jobs, directorships or other paid assignments that are not compatible with the legitimate interests of the State as an employer, or that lend themselves to undermining trust in the public service.

There must be transparency about the potential impact of public officials' outside and second jobs, etc. on the discharge of their duties.

Comments:

According to the duty of loyalty, in some cases, an employee should furnish information about an additional job on his/her own initiative. This is true when there could be doubts about whether the second job is consistent with an employer's legitimate interests.

An employer cannot exercise its management prerogative to generally require all employees to provide information about second jobs. However, in specific cases, the employer can request such information if there are doubts about whether an employee is entitled to have such a second job.

An individual contract of employment can require that an employee is contractually obligated to provide information about second jobs.

It follows from Section 1.1.4 of the Basic Collective Agreement for the Civil Service in the State that public officials cannot have outside part-time positions or other paid assignments that impair or impede their ordinary work, barring special orders or permission. Nor can he or she contribute to disloyal competition with the State organisation in which he or she is employed. Among other things, public officials cannot accept employment or engage in commercial activities that can make them prejudiced more often than just sporadically, or get into a conflict of loyalties with the public organisation by which the person in question is employed. Cases of doubt should be discussed with the employer in advance to avoid potential difficulties for the employee or employer and to preserve confidence in the public service.

Reference is also made to administrative provisions regarding outside work, etc., cf. State Personnel Handbook 10.13 (2005).

As regards the appointment of public officials to boards and committees etc., reference is made to the special provisions in the State Personnel Handbook 2005, Section 10.14. From this, it appears that civil or public servants cannot be appointed, or be nominated or elected to the boards, councils etc., if the person in question is employed by a ministry or the State administration otherwise, and his or her job involves dealing with complaints about decisions made by the entity in question. The same applies if the person in question works with the organisation in question or with other matters of significance for the organisation.

4.3 The transition to other organisations

When a public official leaves the public service, it is important to ensure that the citizenry's trust in the public service is not impaired, or that the State's interests in a negotiation or other interaction are not affected. The employer must therefore consider whether certain positions should be subject to a temporary disqualification clause in the employment contract.

Comments:

Reference is made to the Post-employment Guidelines which entered into force on 15 February 2005. Temporary disqualification and/or abstaining from involvement can only be ordered pursuant to a special clause in a contract of employment. The clause should be included when new contracts of employment are signed if the nature of the job is such that, after closer evaluation, it is considered necessary to include a period of temporary disqualification and/or abstinence from involvement when the person in question leaves the position.

The goal of introducing rules for temporary disqualification and abstinence from involvement is to preserve the citizenry's confidence that the public service is neutral and independent relative to external players, and that public officials behave objectively and fairly, and in keeping with established rules and standards. The rules are also intended help avert the risk that a particular organisation, by hiring a former public official, gains an undue competitive advantage. In the event a contract of employment does not contain a temporary disqualification clause, the employer can instead, within the parameters of the contract of employment, move the employee to a less central function or to another field during the term of notice.

4.4 Contact with former colleagues

All employees are to be careful about how they treat confidential information. This includes in respect of former colleagues, especially if they represent an interested party in a matter where the State is the decision-making authority, or if they are employed by an organisation engaged in interaction or negotiations with the State.

Comments:

As a supplement to the provisions on temporary disqualification and abstinence from involvement, it is important that the employee is careful about how confidential information is treated.

Former colleagues are more familiar than the rest of the general public with issues and problems in the organisation, so public officials must therefore be especially careful about the information they share with them. This applies not least to colleagues who have moved to an enterprise engaged in interaction or negotiation with their own organisation, in case these colleagues might want to take advantage of their former network of contacts.

Naturally, this does not imply that anyone should avoid social contact with former colleagues.

4.5 Accepting gifts and other perquisites

Public officials shall not, on their own behalf or on behalf of others, accept or facilitate the acceptance of gifts, travel, hotel accommodations, hospitality, discounts, loans or other contributions or perquisites that are appropriate to, or intended by the donor, to influence their work.

Public officials must not use their position to gain an undue advantage for themselves or anyone else. This also applies in cases where these advantages would not affect their service-capacity actions.

Comments:

The ban on gifts also applies to public officials on business trips or assignments abroad. Where special cultural factors or diplomatic exigencies mean that not accepting a gift would be perceived as an insult to the donor and thus damage the interests of the Norwegian public service, a gift or other perquisite that would be unacceptable in Norway, can nevertheless in certain cases be accepted if this is commensurate with accepted local customs. However, such gifts or contributions must be turned over to the public official's employer upon returning home.

Money, or assets that can be equated with money, such as loans, discounts, etc., must never be accepted, regardless of the customs in the country in question.

In connection with the performance of their duties, public officials might be invited to meals, performances, on trips, etc. Meals, and to a certain extent also entertainment, might be a natural part of a programme for official visits abroad or in Norway, for example. Official dinners and cultural events will not normally present a problem. However, if a visit abroad or in Norway takes place as part of negotiations for contracts or to get demonstrations of products and/or services, the general rule should be that all travel and subsistence expenses be covered by the organisation sending its employees on the business trip.

Representatives of state organisations are sometimes invited to sports or cultural events by vendors or parties that are in an application or negotiation process with the organisation. In each individual case, careful consideration should be devoted to whether the organisation should accept such invitations. The general rule is that all expenses in connection with such invitations ought to be covered by the organisation itself if the invitation is accepted. Invitations from State-owned organisations and private enterprises should be treated equally in this context.

The State's letterhead and logo shall never be used for personal correspondence.

4.6 Offers of gifts and other perquisites

Public officials shall not, as part of discharging their duties, give or offer gifts or other perquisites that are appropriate to, or intended to, sway the recipient's service-capacity actions.

Comments:

Public officials must not give or offer anyone a gift or advantage as part of the discharge of their duties, with the intent of influencing the recipient's advice or decisions, for example, in connection with contract negotiations or the like. For public officials, it could be considered corruption to accept such a donation or advantage by virtue of one's position. Public officials could also contribute to corruption if, by virtue of their position, they offer someone such a gift or advantage, for example, to garner support in negotiations for the sale or delivery of goods or services. Although the offer was not actually intended to influence the advice or decisions of the person in question, the very fact that a public official has tried to influence someone could impair the general public's trust in the public service. This would be incompatible with current standards for good administrative practice. However, it will still be possible to give tokens of esteem on the occasion of state visits, political visits, delegation visits and the like, when the size or value of the gift is commensurate with the standards of common courtesy.

Similarly, it would not be compatible with one's position as a public official to offer someone an advantage to be bestowed at a later date, for example, after the person in question is no longer with the organisation in question, such as a job, bonus or the like.

Such actions are punishable by law, cf. §§ 276 a-c of the General Civil Penal Code.

5. Professional independence and objectivity

Professional independence must be seen in the context of loyalty and neutrality. The requirement regarding professional independence applies to the entire public service with a view to preparing and deciding cases, consultancy and the presentation of information.

5.1 Professional independence

The principle of professional independence means that public officials should use their professional knowledge and professional judgement to discharge their duties.

Comments:

It is professional knowledge and professional judgement that should form the point of departure for public officials' administrative work. The degree of professional independence will vary somewhat in the public service with a view to the extent of formalisation, cf. that some government agencies are more or less independent of instructions from superiors, although the principle nevertheless applies equally to all State employees. Most public officials are engaged in managing adopted policy, so the question of professional independence is not normally put to the test. Public officials must also remain cognisant of the fact that they will probably be required to serve under changing political regimes.

The principle of professional independence entails a right and an obligation to raise justified exceptions or objections to the political and administrative views of superiors and to established practice, where so required. The duty to make the administration aware of weaknesses in opinions or practices can nonetheless also be explained by the principle of loyalty.

The principle of professional independence does not imply any right to ignore points of view, decisions, practices, etc. that the political or administrative leadership continues to maintain after the subordinate has expressed his or her doubts, unless unlawful or unethical decisions, etc. are involved.

Where a case officer's professionally well-grounded proposal for a solution to a case is set aside in favour of a solution that he or she maintains is professionally untenable or poor, the person in question has the right to make his or her view known in the case (for example, by including it in the preparatory documents). The ministries have a special rule pertaining to this. Regardless of working methods, an employee of a ministry bears the obligation and right to make his or her view known in a manner that it can be communicated to the head of the ministry (i.e. the cabinet minister), cf. Regulations for the ministries' organisation and administrative procedures, §2, no. 3, last subsection.

Ministerial employees face special challenges since the ministries also act as secretariats for the political leadership. Ministerial employees serve the cabinet minister in his or her capacity both as head of a ministry and as a member of the government, but not as a party member. On the one hand, ministerial employees give sound advice to the political leadership, regardless of which political colour is at the political helm, while on the other, they implement adopted policy decided by the same political administration. In other contexts, the employees may have to act on behalf of an authority and take a position on orders, permits and complaints, etc. in relation to individuals. It is important that the individual organisation conducts a dialogue regarding which roles the organisation is intended to perform, which challenges these roles engender and how the roles should be handled. A well thought through understanding of his or her role could help an individual employee when he or she faces an ethical dilemma or an ethical challenge.

Relationship between legislation and regulations

The Public Administration Act contains a number of administrative procedures that cover ethical aspects.

Norway has provisions about the thoroughness of administrative procedures, among other things, that a case is to be illuminated as well as possible prior to administrative decisions being taken. The individual employee shall deal with cases as quickly and efficiently as possible. In the balance between thoroughness and expedience, the individual organisation shall establish a practice for what is 'good enough' relative to different types of cases.

Norway has provisions about notification of the person(s) to which a case refers. This party shall have an opportunity to make a statement before any decision is taken. The party also has the right to appeal an administrative decision.

The Public Administration Act has competency rules intended to engender trust in the public service. In the event circumstances arise that can serve to weaken the impartiality of decision makers, the person in question must step aside.

Moreover, the Public Administration Act contains rules about parties' right of access to documents, the duty to provide guidance, and confidentiality, and the Freedom of Information Act has rules regarding transparency and public disclosure. These rules assign responsibilities and rights to administrative bodies and parties, and thereby translate important ethical principles and attitudes into practical administrative procedures.

Non-statutory administrative principles, for example knowledge about the misuse of authority, set standards regarding how judgement should be exercised. Public officials shall take into account all relevant considerations, treat identical cases equally, not take extraneous or arbitrary considerations into account and not adopt unreasonable decisions.

Moreover, we have general non-statutory principles of 'good practice'.

The General Civil Penal Code contains provisions on corruption and trading in influence in §§276 a, b and c. Gross corruption has a sentencing framework of up to 10 years. In deciding whether a matter is to be considered gross corruption, emphasis shall be attached to whether the act has been performed by a public official or to a public official. Otherwise, Chapter 11 of the General Civil Penal Code contains rules about 'Felonies in the public service'.

In this context, reference is also made to **the Human Rights Act** that gives a number of international conventions status as Norwegian law, for the protection of human rights and the fundamental freedoms.

§20 of the Civil Service Act and §2 of the new Civil and Public Servants' Act are also important in this field. These provisions establish that a public official cannot accept a gift, commission, service or the like that is appropriate to, or intended by the donor to influence his or her service-capacity actions.

The Working Environment Act contains provisions about preserving the lives and health of the individual employee and ensuring the protection of the working environment. Among other things, employees have a duty to inform their employer, safety delegate and insofar as necessary other employees about faults or defects that could potentially endanger life and health. The employer and all State employees share a responsibility for showing respect for others, preventing health hazards, developing a good working environment, ensuring high quality and safety in the discharge of work, and ensuring that environmental considerations are taken in connection with routine operations. The public service depends on a good culture of security. All State employees are required to observe current security regulations, including local provisions on IT security and information subject to the obligation of professional secrecy.



MODERNISERINGSDEPARTEMENTET

Post-Employment Guidelines for Politicians

**Laid down by the Ministry of Modernisation on 29 September 2005,
Applicable as from 17 October 2005**

General information about the background for the Post-employment Guidelines

As a point of departure, please note that it is important that there be movement of personnel between the public and private sectors and that there should be no unnecessary impediments put in the way of such movement. It is assumed that very few situations will arise that might call for the use of instruments such as temporary restrictions. It will nonetheless be profoundly important to take advantage of such options when special circumstances merit their use.

In connection with transitions from public to private employment, it is important to maintain the general public's confidence in the public service, and in civil and public servants as well as in the political leadership. Integrity and impartiality are absolute prerequisites in the public sector. Public officials are to act fairly, objectively, impartially and in compliance with established rules, but in order to maintain confidence, it is equally important that the public service be recognised by the outside world as acting in this way.

An employer will have a vested interest in ensuring that trade secrets and other in-house knowledge are not misused when an employee accepts a new position with a competitor. This consideration can warrant a temporary disqualification clause for employees in private organisations. Although State administrative agencies do not ordinarily operate on competitive markets, the public service may also have a legitimate need for clauses on temporary disqualification and/or abstinence from involvement in certain cases. The public service is responsible for ensuring the administration's integrity and impartiality are not impugned when public servants and politicians accept new jobs. There are three factors that might warrant ordering temporary disqualification and/or abstinence from involvement in certain cases for politicians:

1) The need to protect confidential information

The State must seek to prevent other organisations from gaining knowledge about an administrative agency's strategies and plans, e.g. plans for the formulation of policy or rules. Such knowledge could result in illegal competitive advantages.

2) The need to protect other organisations' trade secrets, etc.

The State must seek to prevent one organisation from gaining access to confidential information about other organisations, including trade secrets, etc. Such knowledge could result in illegal competitive advantages.

3) The need to inspire confidence

The State must behave in an orderly fashion to prevent suspicions that politicians have taken advantage of their position to bestow special advantages on an organisation. Such suspicions could impair the general public's confidence in the political system and in the integrity and impartiality of the public service.

The post-employment guidelines are also intended to help avert the risk that a particular organisation will gain an unfair competitive advantage by hiring a particular person. The guidelines are also intended to prevent suspicions that a position might be a reward for earlier services.

The post-employment guidelines supplement a number of other rules intended to protect the integrity and impartiality of the public service, including the Public Administration Act's competency rules, rules on employees' obligation of loyalty, the public service's general fairness requirement (including the doctrine on the abuse of authority), the obligation of professional secrecy and employers' management prerogative.

However, the Public Administration Act's competency rules require that the conflict of interest in question be present already at the time the decision is taken by the public service. When an employee moves to a new position, any conflict of interest will typically arise at some future point in time, i.e. when the Public Administration Act's competency rules no longer apply.

The duty of loyalty can place constraints on the opportunity to use knowledge built up by a former employer, but it is not clear how far the duty of loyalty actually extends. The obligation of professional secrecy in §13 of the Public Administration Act protects personal matters and trade secrets, but information about in-house conditions in the public service is rarely considered a trade secret subject to the obligation of secrecy.

Post-employment Guidelines for Politicians

1. Temporary disqualification

In *certain cases*, the Committee on Outside Political Appointments can decide that a politician cannot work or provide services for an organisation outside the public service for up to six months after leaving his or her public service position. Temporary disqualification will be ordered only in the event there is a very direct connection between the politician's previous spheres of responsibility or duties and the relevant organisation's interests.

The Committee on Outside Political Appointments can also determine that a politician cannot work or provide services for an organisation outside the Norwegian public service for up to six months after leaving if special circumstances exist in conjunction with the person's earlier duties and responsibilities that have given or could give the organisation special advantages, or that might serve to undermine confidence in the public service in general.

2. Abstinance from involvement in certain cases

Instead of being subject to temporary disqualification, a politician can be ordered to abstain from involvement in certain cases for up to one year, provided this would adequately safeguard the considerations that must be protected, cf. Section 1. Where special circumstances so indicate, abstinance from involvement in certain cases can be ordered for up to one year in addition to temporary disqualification. Temporary restrictions shall not be imposed for a total of more than one year altogether, calculated from the time the person in question leaves his or her office.

The term 'abstinance from involvement in certain cases' refers to a ban on the politician's gets involved in a case or in a field in which he or she has been directly involved by virtue of being a politician.

3. Subsequent transitions

Pursuant to Sections 1 and 2 above, temporary restrictions can also be ordered within one year from the time the politician leaves office in the event the politician does not make a direct transition to the position in question, etc.

4. The duty to disclose information

Two weeks at the latest before starting any new job, the politician is required to voluntarily disclose to the Committee on Outside Political Appointments the requisite information about starting a new job, accepting an office outside the public service, or starting a business. The duty to disclose information does not apply if it is obvious that temporary restrictions would not be relevant.

The duty to disclose information applies to all new positions within one year after the politician leaves office.

5. Remuneration

Where a temporary disqualification is ordered, the politician shall receive remuneration during the disqualification period comparable to the net salary he or she had upon leaving office plus holiday pay. The State shall cover pension expenses during the disqualification period, corresponding to ordinary membership in the Norwegian Public Service Pension Fund/pension scheme for cabinet ministers.

In addition, during the temporary disqualification period, the person in question will be covered by group life insurance corresponding to the scheme in the Norwegian Public Service Pension Fund.

6. Agreed damages

If a politician breaches the duty to disclose information, i.e., fails to report a position, an office or the start-up of a business of such a nature that temporary restrictions might have been imposed, the Committee can require the person in question to pay agreed damages.

Where a politician behaves at variance with temporary restrictions, the Committee can require the person in question to pay agreed damages.

The term 'agreed damages' refers to a penalty fixed ahead of time and comparable to up to six months' salary, to be paid to the State. The Committee on Outside Political Appointments shall stipulate the amount of the penalty in each individual case.

7. Administrative procedures in the Committee on Outside Political Appointments

The Committee on Outside Political Appointments has a deadline of one week, during which a meeting shall be held with the politician if so desired, to decide whether to impose temporary restrictions, calculated from the time when the person in question has disclosed the requisite information about an employment relationship, cf. Section 4 on the duty to disclose information. The meeting shall include all or part of the Committee.

The politician has a period of four days to make a statement, calculated from the date on which he or she is informed of the decision of the Committee.

The Committee on Outside Political Appointments must undertake a new assessment of the case within three days.

OTHER INFORMATION

More details about the legal authority for temporary restrictions and the duty to disclose information

Temporary disqualification, abstinence from involvement in certain cases and the duty to disclose information can be imposed only if so stated in a royal decree sanctioning the appointment of ministers and state secretaries or in a letter of employment in the case of political advisers.

The letter of employment sent to all politicians shall also state that the Committee can require agreed damages if a politician breaches the temporary restrictions or the duty to disclose information.

More details about administrative procedures in the Committee

The Committee on Outside Political Appointments consists of four members, and simple majority decides cases. At least three members must be present to constitute a quorum. In the event of a tie vote, the chair shall have the casting ballot. Electronic administrative procedures may be used.

The Committee on Outside Political Appointments can authorise the secretariat to handle routine matters, and in such cases the secretariat will take instructions exclusively from the Committee. The Committee on Outside Political Appointments will decide what should be defined as routine matters.

Politicians shall also have the opportunity to make statements in advance. Such cases will be handled by the secretariat, and they will not have a binding effect on the Committee in future decisions. It is emphasised that the secretariat has an extensive duty to provide guidance.

It is also important to point out that the Committee on Outside Political Appointments and the secretariat are subject to the Freedom of Information Act, also as regards cases involving statements made in advance.

The Ministry of Government Administration and Reform has the authority to issue supplementary rules on administrative procedures for the Committee on Outside Political Appointments.

For the record, it is important to point out that limitations can be imposed on politicians who return to the civil service in a ministry, and in this context reference is made to "The Guidelines for the Use of Temporary Disqualification upon Transition from a Political Position to a Ministerial Position".



Post-Employment Guidelines for Public Service

The Ministry of Modernisation, 4 July 2005

Post Employment Guidelines for Public Service

Introductory comments:

As a point of departure, it must be underlined that it is important to have a flow of personnel between the public and private sectors and that there should be no unnecessary impediments put into place. It is assumed that a clause on temporary disqualification and/or abstinence from involvement in certain cases should only be incorporated into employment contracts in certain cases. Accordingly, there will be very few situations in which it will be necessary to take advantage of the instruments at hand such as temporary disqualification or abstinence from involvement in cases in connection with the transition to a new position outside the public service. It will nonetheless be profoundly important to have such instruments available in the cases in which special circumstances merit their use.

In connection with transitions from public to private sector, it is important to maintain the general public's confidence in the State administration and in civil and public servants. Integrity and impartiality are basic prerequisites for public undertakings. The civil service must be impartial and independent relative to outside players. The public service shall act fairly, objectively, impartially and in compliance with established rules but, for confidence to be maintained, it is equally important that the public service also be perceived by the outside world as doing this

An employer will have a vested interest in ensuring that trade secrets and other internal corporate knowledge are not misused if an employee accepts a new position with a competitor. This consideration can warrant a temporary disqualification clause for employees in private organisations. Although State administrative agencies do not ordinarily operate in a competitive market, State administrative agencies may also have a justifiable need for clauses on temporary disqualification and/or abstinence from involvement in certain cases. The State administration is responsible for preventing the administration's integrity and impartiality from being called into doubt when a civil or public servant accepts a new job. Accordingly, there are three special factors that might justify a temporary disqualification and/or abstinence from involvement in certain cases for civil servants:

The need to protect internal information

State administrative agencies must seek to prevent other organisations from gaining knowledge about an administrative agency's strategies and plans, e.g. plans for the formulation of policy or rules. Such knowledge could result in illegal competitive advantages.

The need to protect other organisations trade secrets

State administrative agencies must seek to prevent an organisation from gaining access to confidential information about other organisations, including trade secrets, etc. Such knowledge could result in illegal competitive advantages.

The need to safeguard the general public's confidence in the public service

State administrative agencies must seek to prevent suspicions that a civil or public servant has taken advantage of his or her position to gain special advantages for an organisation. Such suspicions could impair the general public's confidence in the administration's integrity and impartiality.

A special legal authority must be established in an employment contract for an individual employee – a clause regarding temporary disqualification and/or abstinence from involvement in certain cases – if the employer is to be able to take advantage of these instruments. At the time of hiring, the employer must decide whether the position is of such a nature that such a clause will be required. The clause will then apply throughout the entire employment relationship and for a designated length of time after the employee leaves. In the event the employee wants to move to another position that falls under the clause, the person in question can apply to the employer for an exemption.

Like a number of other rules, the Post-employment Guidelines for the Public Service were created to preserve the integrity and impartiality of the public service, e.g. the Public Administration Act's competency rules, rules regarding employees' duty of loyalty, the public service's general fairness requirement (including the doctrine on the abuse of authority), the obligation of professional secrecy and employers' management prerogative. In addition, the Ethical Guidelines for the Public Service will enter into effect in 2005.

Notwithstanding, the Public Administration Act's competency rules govern conflicts of interest that already exist at the time decisions are taken in the public service. When an employee moves to a new position, any conflict of interest will typically arise at a future point in time, i.e. when the Public Administration Act's competency rules no longer apply.

The duty of loyalty can place constraints on the opportunity to use knowledge built up by a former employer, but it is not clear how far the duty of loyalty actually goes. The obligation of professional secrecy in §13 of the Public Administration Act protects personal matters and trade secrets, but information about in-house conditions in the public service is rarely considered a trade secret subject to the obligation of secrecy.

Employers' management prerogative implies that an employer can transfer an employee during the period of notice. This is a fairly non-invasive policy instrument and should be considered first, although it will not be sufficient in all situations.

Other than the confidentiality ensuing from the Public Administration Act, an employer can also order an employee to maintain relatively comprehensive confidentiality in connection with any change of position. An order that requires civil and public servants to maintain confidentiality about strategically important information will also apply after the person leaves.

As regards current employees' contact with former colleagues, it is important to raise awareness about how employees should act when former employees take contact. In this context, reference is made to the Ethical Guidelines for the Public Service.

The individual employer may issue complementary post-employment guidelines as needed.

1.

Where the nature of the position so requires, a clause on temporary disqualification and/or abstinence from involvement in certain cases in connection with a transition to a new position will be included in the employment contract from the beginning of an employment relationship.

The term 'temporary disqualification' refers to a ban for up to six months after leaving, on the employee being employed by or performing services for an organisation outside the public service that has or can have contact with the employee's sphere of responsibility or responsibilities as a civil servant. The same applies to organisations outside the public service, which for other reasons have or could have special advantages due to the employee's position as a civil servant.

The term 'abstinence from involvement in certain cases' refers to a ban for up to one year after leaving on an employee getting involved in cases or areas that involve the employee's spheres of responsibility or responsibilities as a civil servant.

2.

Employment contracts are to cover the duty of an employee to report to his or her employer about all offers of new positions the employee might entertain. Similarly, the obligation to report shall apply to offices and plans regarding the start-up of economic activities.

Mandatory reporting shall apply during an employment relationship and for an agreed period of time after the employee leaves.

3.

The employer may in writing grant full or partial exemption from temporary disqualification and/or abstinence from involvement in certain cases based on an application from the employee.

The exemption covers only the one specific position. In the event of a subsequent transition to another position within the period specified in the clause, the temporary disqualification and/or abstinence from involvement in certain cases will continue to apply.

An exemption shall be granted unless it refers to particular cases in which there is a very concrete link between an employee's spheres of responsibility and responsibilities as a civil and public servant, and the organisation that the employee would like to be hired into or provide services for.

4.

The employer shall take a decision on the application for an exemption from temporary disqualification and/or abstinence from involvement in certain cases within one week from the time the employee has provided the necessary information about the new employment relationship, cf. Section 2 on the employee's obligation to report.

The employee may make a statement in the case within one week of the date on which the employer's decision is communicated to the employee. The employee can request a meeting with his or her employer regarding the case, and may elect to be accompanied to the meeting by a union representative or other adviser/representative.

The employer must undertake a new assessment of the case within one week after the statement from the employee has been presented.

5.

Where assuming a new position has to be deferred or is forestalled due to a temporary disqualification, the employee shall receive remuneration during the temporary disqualification period corresponding to the net salary the person in question had upon leaving plus holiday pay. The employer covers pension expenses during the temporary disqualification period, comparable to ordinary membership in the Norwegian Public Service Pension Fund.

In addition, the employee will be covered by group life insurance in the Norwegian Public Service Pension Fund during the temporary disqualification period.

6.

An employment contract shall cover agreed damages if the employee behaves at variance with the temporary disqualification or abstinence from involvement in certain cases, or breaches the obligation for mandatory reporting.

The term 'agreed damages' refers to agreement in advance about a penalty corresponding to up to six months' salary, calculated on the basis of the salary in the previous position.

7.

The employer shall cancel the clause regarding temporary disqualification and/or abstinence from involvement in certain cases in writing in the event the factors that justified the clause no longer apply.