

District Should Consider Requiring Review and Approval of All District Employees' Outside Employment

April 11, 2025

A report by the Office of the District of Columbia Auditor



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The Hon. Muriel Bowser
Mayor, District of Columbia
The John A. Wilson Building
1350 Pennsylvania Ave, N.W.
Washington, DC 20004

Management Alert: District Should Consider Requiring Review and Approval of All District Employees' Outside Employment

Dear Mayor Bowser:

The Office of the D.C. Auditor (ODCA) is publishing this Management Alert Report (MAR) first submitted February 11, 2025, to inform you that the District of Columbia government's current regulations on employees' outside employment¹ are inadequate and should be strengthened.

Overview

Although current District code and regulations define prohibitions on outside employment, there is no District-wide requirement that employees report their outside employment to their agency's management. Despite the absence of a reporting requirement that applies to all employees, a 2021 D.C. Department of Human Resources (DCHR) issuance on outside employment states: "[a]gency heads shall ensure compliance with the provisions of [the] issuance and should refer any incidents or violations that warrant investigation to the [DCHR.]" The issuance, however, provides no guidance on how agency heads are expected to ensure employees' compliance or the agency heads' authority to do so.

The District's financial disclosure process, administered by the Board of Ethics and Government Accountability (BEGA), requires certain employees to report any outside employment. However, according to BEGA, only an estimated 25% of the District's workforce is required to file a financial disclosure statement annually.

¹ As discussed further in this MAR, D.C. Code and other criteria use the terms "outside employment." ODCA's discussion of "outside employment" is intended to encompass any compensated outside work, including self-employment and independent contractor work.

Recent publicized cases of improper outside employment

In light of several well-publicized cases of improper outside employment involving District employees in 2024,² ODCA began to look more closely at existing District law, regulations, and policy on the subject.³ Specifically, we looked for reporting requirements imposed on employees and any oversight responsibilities assigned to District agency management. The cases reported by the media last year prompt questions about how situations like this happen and what could be done to deter or prevent District employees from engaging in improper outside employment.

Existing District criteria

D.C. Code, D.C. Municipal Regulations (DCMR) and the District Personnel Manual (DPM) define general prohibitions on outside employment in the following ways.

D.C. Code⁴ states “No employee, member of a board or commission, or a public official of the District government shall engage in outside employment or private business activity or have any direct or indirect financial interest that conflicts or would appear to conflict with the fair, impartial, and objective performance of officially assigned duties and responsibilities.”

The relevant **DCMR** regulations,⁵ “Outside Employment and Private Representations,” include these general prohibitions on outside employment:

A District government employee shall not engage in any outside employment or other activity incompatible with the full and proper discharge of his or her duties and responsibilities. Activities or actions that are not compatible with government employment include, but are not limited to the following:

- (a) Engaging in any outside employment, private business activity, or other interest that is reasonably likely to interfere with the employee’s ability to perform his or her job, or which may impair the efficient operation of the District government;
- (b) Using government time or resources for other than official business....

However, the regulations do not require an employee to seek approval for or inform their agency’s management about their outside employment, nor do they explain whether and how potential violations of these prohibitions should be investigated.

2 Flynn, Meagan, “D.C. buildings official resigns after probe finds she had 2nd full-time job,” Washington Post, August 8, 2024, <https://www.washingtonpost.com/dc-md-va/2024/08/07/dc-buildings-official-resign-jobs/>. Flynn, Meagan, “D.C. Public Library’s HR Director resigns after ethics probe into doula work,” Washington Post, April 9, 2024, <https://www.washingtonpost.com/dc-md-va/2024/04/08/dc-public-library-hr-director-resign-doula/>.

3 Coincidentally, as ODCA was finalizing this MAR, another case of improper outside employment was publicized. See, Schumer, Mathew, “Former Pest Control Inspector Pleaded Guilty to Working for Two Government Agencies at the Same Time,” Washington City Paper, January 30, 2025, <https://washingtoncitypaper.com/article/757409/former-pest-control-inspector-pleaded-guilty-to-working-for-two-government-agencies-at-the-same-time/>.

4 DC Code § 1-618.02.

5 6 DCMR § B18007.

DPM Issuance I—2021-6 or “Working More Than One Job”, was issued by DCHR on January 22, 2021, and essentially reiterates the regulations. Regarding holding a second job with “another employer,” the issuance states:

Employees may usually hold a second job with another employer. However, as stewards of the public trust, we are held to high ethical conduct standards. For this reason, employees may not hold a second job with another employer when that job creates an actual or perceived conflict of interest.

Employees are prohibited from holding outside employment when working for that employer:

1. Creates a conflict interest [sic] between the employee’s governmental duties and the outside employment; or
2. Interferes with the employee’s ability to carry out their official District government duties.

The issuance does not require an employee to report outside employment. However, it does contain language regarding agencies’ enforcement responsibility and briefly discusses DCHR’s and BEGA’s⁶ respective roles:⁷

Agencies’ responsibility to enforce, refer to DCHR

“Agency heads shall ensure compliance with the provisions of this issuance and should refer any incidents or violations that warrant investigation to the D.C. Department of Human Resources.”

Despite assigning this responsibility to agency heads, the issuance offers no guidance on how agency heads “should ensure compliance.” Additionally, the word “should” indicates a recommendation rather than a strict requirement.

BEGA advisory opinion

A section of the issuance titled “Ethics” encourages, but does not require, employees to contact BEGA: “[BEGA] helps District government employees determine whether engaging in an outside job may be prohibited or create a conflict of interest.

Before working an outside job, you should submit a formal request for an advisory opinion to BEGA...”⁸

6 The Office of Government Ethics (OGE), an office within BEGA, investigates allegations of ethical misconduct concerning District government employees and officials. “Through its Director, the Office serves as the District’s ethics prosecutor and is empowered to bring enforcement proceedings before the five-member Board of Ethics and Government Accountability (the ‘Board’) which, in turn, can levy civil penalties including substantial monetary fines.”

7 The issuance references Mayor’s Memorandum 2003-6, “Policies on Outside Employment and Dual Compensation,” which was issued in August 2003. The Memorandum states that “Department and agency heads” are responsible for “ensuring compliance with the provisions governing outside employment” and “referring any incidents or violations that warrant investigation to the authorities, including, where appropriate, the Office of the Inspector General or the Office of the Corporation Counsel.”

8 The issuance continues: “BEGA’s advisory opinion may provide a ‘safe harbor.’ This means that BEGA will take no enforcement action against an employee for their outside employment if the employee fully and accurately discloses all relevant circumstances and information in seeking the advisory opinion, and the employee complies with the terms of the advisory opinion.”

No coordination or referrals between DCHR and BEGA

For this MAR, ODCA interviewed managers at both DCHR and BEGA. When asked about the 2021 DCHR issuance, a senior DCHR official informed ODCA that BEGA was solely responsible for the language in the issuance. BEGA interviewees, however, said they were unaware of the requirement in it that agency heads refer incidents and violations to DCHR. Furthermore, BEGA interviewees said DCHR does not refer potential outside employment violations from other agencies to BEGA for investigation.⁹ According to interviewees, the allegations of improper outside employment that BEGA investigates typically come from a subject's co-workers and sometimes through the financial disclosure statement process.

District agency-specific policies on outside employment

Through research and interviews, ODCA learned that at least two District agencies under the Mayor's authority, D.C. Public Schools (DCPS) and the Metropolitan Police Department (MPD), have additional policies regarding outside employment. The Office of the D.C. Auditor, an independent agency, does as well.

D.C. Public Schools – DCPS's "Employee Rights & Responsibilities Policy" dated August 2017, references and essentially reiterates the relevant portion of DCMR Title 6-B:

Employees may not engage in outside employment or private business activity that conflicts, or appears to conflict, with the performance of their assigned duties. A DCPS employee may hold a second job provided that position does not conflict with their official duties with DCPS. This includes a prohibition on engaging in other forms of employment during the hours of duty for which she or he is compensated by DCPS....

DCPS's "Employee Rights & Responsibilities Policy" is silent on whether an employee should seek approval from or notify DCPS of their outside employment. Furthermore, DCPS's policy contains no guidance on how a known or suspected instance of impermissible outside employment should be reported or how it should be investigated.

Metropolitan Police Department – MPD General Order (GO) GO-PER-201.17, effective April 2004, is in place to "help direct and guide members considering or involved in outside employment."

The policy of the [MPD] is that members of the Department may engage in outside employment, when the employment conforms with existing laws and regulations, does not conflict or interfere with the mission of the Department, present the perception of impropriety or undermine the integrity or efficiency of the Department."

The GO contains this rule: "Members shall not engage in outside employment without proper authorization from their Assistant Chief/Senior Executive Director." The GO also provides detailed procedural guidelines regarding the approval of outside employment and states, "[a]ny member desiring

⁹ ODCA assessed the number and types of cases investigated by BEGA from 2022 through 2024. According to information posted online, BEGA handled 42 outside employment complaints during that period.

to engage in outside employment shall notify the Department of such intention by submitting [specific documents] to the member’s Commanding Officer prior to accepting such employment.”

Requirements imposed by surrounding jurisdictions

ODCA conducted benchmarking of surrounding county governments to determine the extent of their outside employment regulations and reporting requirements imposed on employees. ODCA assessed requirements promulgated by Arlington County and Fairfax County in Virginia, and Montgomery County and Prince George’s County in Maryland, and determined that all four counties require employees to submit a form for approval identifying their outside employment. Below are two examples of requirements imposed by neighboring jurisdictions that are significantly stronger than the District’s current criteria.

Prince George’s County – Administrative Procedure 152, revised on October 12, 2022, “applies to all instances when a Prince George’s County employee or official is considering working for, or is working with, an entity outside of Prince George’s County government.”¹⁰ County officials and employees must apply for secondary employment approval using a web-based system administered by the County’s Office of Ethics and Accountability and before engaging in secondary employment, their request must be reviewed by their department head for approval.

Montgomery County – Montgomery County’s Ethics Law¹¹ prohibits a public employee from engaging in any other employment unless the employment is approved.¹² “County employees who wish to provide services for money other than their County job (outside employment) must obtain approval in advance of engaging in the outside employment from the Montgomery County Ethics Commission.” Montgomery County is notable, too, in that all approved outside employment for Montgomery County employees can be viewed on a public-facing website.¹³

Conclusion

With more recent news stories about alleged instances of improper outside employment by District employees, we conclude that there is a risk of further violation of outside employment rules. After reviewing existing District requirements in comparison with those imposed by neighboring jurisdictions, we believe the risk can be alleviated or at least minimized. To that end, the Council and the EOM should strengthen the District’s requirements regarding employees’ outside employment and clarify responsibilities among existing government organizations. The 2021 DCHR issuance and the Mayor’s Memorandum that it refers to assign various responsibilities to DCHR, BEGA, the Office of the Attorney General, and the D.C. Office of the Inspector General but do so without requiring coordination or shared awareness of potential violations and investigations between DCHR and BEGA. These roles can be clarified.

10 Per the Procedure, “[e]mployees of the Police Department who seek to participate in non-law enforcement secondary employment shall follow the same process referenced above for employees and officials of the County.”

11 Montgomery County Public Ethics Law. (1990 L.M.C., ch. 21, § 1.)

12 Several notable groups of employees, including employees of the State’s Attorney’s Office, the Sheriff’s Office, and Montgomery County Public Schools, are exempt from the County’s public ethics law.

13 See https://data.montgomerycountymd.gov/Government/Outside-Employment/j6hr-qfpx/data_preview

Recommendation

The Mayor in consultation with personnel officials and the D.C. Council should determine how best to (1) ensure compliance with existing law on outside employment (including outside employment, self-employment, and independent contractor work) including considering requiring approval consistent with surrounding jurisdictions, and (2) clarify how any suspected violations of the District's prohibitions on outside employment should be received, investigated, tracked, resolved, and reported. Additional policy to ensure compliance—whether legislative or regulatory—should apply to all District employees including those in independent agencies with independent personnel authority.

In addition, for your information we provided a copy of this Management Alert Report to the Department of Human Resources and the Board of Ethics and Government Accountability.

Thank you very much for your consideration.

Sincerely yours,



Kathleen Patterson
District of Columbia Auditor

cc: Charles Hall, Jr., DCHR
Ashley D. Cooks, BEGA

Agency Comments

ODCA sent this Management Alert Report to the Executive Office of the Mayor on February 11, 2025. The Executive requested additional time to provide comments, which ODCA approved, but as of the date of publication a written response has not been provided. We will reissue the report with the Executive's comments if we receive them and will include additional comments from ODCA if warranted.

About ODCA

The mission of the Office of the District of Columbia Auditor (ODCA) is to support the Council of the District of Columbia by making sound recommendations that improve the effectiveness, efficiency, and accountability of the District government.

To fulfill our mission, we conduct performance audits, non-audit reviews, and revenue certifications. The residents of the District of Columbia are one of our primary customers and we strive to keep the residents of the District of Columbia informed on how their government is operating and how their tax money is being spent.

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