

## **Conflicts of Interest**

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Ethics officers at major U.S. corporations identify conflicts of interest as the number one ethics issue at their firm. Despite the prevalence of such conflicts among employees, there is a great deal of confusion as to what constitutes a conflict of interest. This confusion is understandable. Several forms of conflicts of interest exist, and a single situation often may involve more than one type of conflict. What exactly is a conflict interest? What are the various forms of conflict of interest? And what should companies do to diminish conflicts of interest on the part of their employees?

#### **Conflicts of Interest**

As the name suggests, a conflict of interest exists whenever an individual has two or more significant, competing, and perhaps mutually exclusive interests and whenever this conflict is likely to compromise a duty owed by this individual to another party. An employee who works for a computer company installing computers and who then moonlights in the evening setting up computers for a competitor has a conflict of interest. He has a duty to help his employer to establish a successful business. This interest is significantly compromised if he is working on the side for a competitor in the same business.

If the agent has opposed interests but these interests are not likely to compromise the agent's duty, there is no ethically problematic conflict of interest. A realtor who is hired by a seller has a duty to try to sell the seller's home. The realtor has an interest in fulfilling this duty and in earning a commission on the sale. The realtor may hate the decor of the seller's house and may have an interest in never herself living in this style of house. While these two interests are in some sense opposed, the realtor has no conflict of interest. It is unlikely that her dislike will compromise her ability to market the seller's house. The realtor wants to earn a commission through the sale. The realtor's ability and willingness to sell her clients' property is not contingent upon her liking every single house she markets. Since her competing interests do not compromise her duty to her clients, no conflict of interest exists in this case.

#### **Positional or Role-based Conflict of Interest**

When a person acts in a fashion likely to bias or compromise the judgement she is expected to exercise when fulfilling her role, she has a conflict of interest. A lawyer who represents both sides in a divorce case would have a positional conflict of interest. She cannot be a strong and effective advocate for the one side while simultaneously trying to get the best deal for the opposing side. Her judgment would be biased toward one side or would be very confused and unsound. A purchasing agent who accepts gifts or significant favors from suppliers also has a positional conflict of interest. The suppliers giving these gifts expect favorable or preferential treatment from the purchasing agent. The purchasing agent's role-based duty is to secure the best goods at the best price for the company. Accepting gifts from suppliers may bias his judgment in favor of a supplier whose goods are shoddy, inappropriate or overpriced.

#### **Abuse of Position**

In a related type of conflict of interest, the agent abuses his position with a view to advancing his personal interest instead of using the position to advance the interests of those to whom he owes his primary duty. The purchasing agent who extorts money from suppliers in return for giving them business is involved in an abuse of position conflict of interest. Someone may have such a conflict even if no money exchanges hands. The manager who demands that subordinates provide sexual favors in return for promotion abuses his or her position. The manager's professional interest and duty lies in advancing those employees whose skills and talents will most benefit the company, not in using the managerial position to secure personal sexual satisfaction.

#### **Violating Confidentiality**

In a third form of conflict of interest, the individual breaches his duty by disclosing or abusing information he has gained by virtue of his role. The professional code of lawyers prohibits them from using information given to them in confidence by clients to advance the lawyer's personal interests or agendas. The lawyer owes a primary duty to protect the client's interest, which includes the client's interest in being able to trust the lawyer. Even if the client does not suffer financially or legally as a result of a breach of confidence, the lawyer's behavior creates a suspicion that the lawyer is more interested in personal gain than in protecting the client's interest. Similarly, an employee who shares nonpublic company information with outsiders may have a conflict of interest. The employee need not gain financially. He may desire a moment of fame or may simply want to impress an outsider. The employee's motivation is largely irrelevant in cases of conflicts of interest. What matters is whether the employee has put himself in a position where his competing interests are likely to compromise his ability to discharge the duty he owes to his company.

#### Engaging in Direct Competition

Finally, a conflict of interest exists whenever an employee directly competes with his employer. Suppose an employee of a retail cosmetics company spends his evenings selling cosmetics through a multi-level marketing scheme. In this case, the employee may be stealing customers away from his employer. Furthermore, the employee may spend so much time thinking about his sideline business that he does not work as hard or as thoughtfully as he should in his day job. Even if the employee's performance does not suffer and even if he discloses his night job to his employer, he still has a conflict of interest because the employee is potentially taking customers away from the retail company.

In addition, the employee may be using confidential corporate information about demographics or consumer preferences when selling the MLM products. If so, he has two conflicts of interest: he is violating confidentiality as well as engaging in direct competition.

#### Addressing Conflicts of Interest

Since conflicts of interest are so pervasive and often rather subtle, companies should take the following steps to minimize these conflicts:

- \* Write and enforce a conflict of interest policy.
- \* Make certain that the policy covers all four types of conflicts of interest.
- \* Educate employees and board members about the policy.
- \* Let employees know that they may have a conflict of interest even if they do not gain financially by acting on a competing interest.