

WISCONSIN



DWD

Task Force on Misclassification and Payroll Fraud

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Topics

Conflicts of
Interest and
Ethics

Open
Meetings

Public
Records



Conflicts of Interest and Ethics



Conflicts of Interest and Ethics for State Public Officials

- 2019 Executive Order #20 created the Joint Enforcement Task Force on Worker Misclassification to propose legislation, rules, or policy to address misclassification of workers
- Task force members appointed by Governor are “State Public Officials”



Long-standing statutory policy:

- “The legislature hereby reaffirms that a state public official holds his or her position as **a public trust**, and any effort to realize substantial personal gain through official conduct is a violation of that trust.”

Wis. Stat. § 19.45



Balanced with ...

- “The legislature... recognizes that in a representative democracy, the representatives are drawn from society and, therefore, cannot and should not be without all personal and economic interest in the decisions and policies of government.”

Wis. Stat. § 19.45



Restrictions on state public officials:

- A state public official may not use his or her position to produce or assist in producing a substantial direct or indirect benefit for him or herself, immediate family, or an associated organization.

Wis. Stat. §§ 19.45, 19.46



Nonetheless, SPO may participate where there is a private interest if:

- The action will affect a whole class of similarly-situated interests;
- The private interest is not significant when compared to all affected interests in class;
- The action's effect is neither significantly greater nor less than upon other class members.



Open Meetings



The Wisconsin Open Meetings Law

- Wis. Department of Justice – Office of Open Government, October 2016
- <https://www.doj.state.wi.us/office-open-government/open-government-law-and-compliance-guides>



Open Meetings Law

Wis. Stat. § 19.81

- “In recognition of the fact that a representative government of the American type is dependent upon an informed electorate, it is declared to be the policy of this state that **the public is entitled to the *fullest and most complete information* regarding the affairs of government as is compatible with the conduct of governmental business.**”



Task Force is a “governmental body ”

- All Task Force meetings
 - Must be preceded by public notice, and
 - Must be held in a public place that is open and reasonably accessible to all members of the public.



A “meeting ” occurs whenever:

- Members **convene** for the **purpose** of conducting governmental business; and
- The **number** of members present is sufficient to determine the body's course of action

State et al. v. Newspapers v. Showers, 135 Wis. 2d 77 (1987)



Meetings presumed open

- Meetings begin in open session
 - Citizens right to attend and observe
 - Allow recording, filming, or photographing the meeting



Meetings presumed open (cont.)

- By motion, may go into closed session
 - Votes of each member must be recorded
 - Chair must announce the statutory exemption authorizing closed session and the nature of the business to be considered



Public Records



The Wisconsin Public Records Law

- Wis. Department of Justice – Office of Open Government, October 2016
- <https://www.doj.state.wi.us/office-open-government/open-government-law-and-compliance-guides>



Public Records Law

Wis. Stat. § 19.31

- The public records law “shall be construed in every instance with **a presumption of complete public access, consistent with the conduct of government business.** The denial of public access generally is contrary to the public interest, and only in an exceptional case may access be denied.”



The Task Force must produce records upon request

- “Record” is “[a]ny material on which written, drawn, printed, spoken, visual or electromagnetic information or electronically generated or stored data is recorded or preserved, regardless of physical form or characteristics, which **has been created or is being kept by** an authority.”

Wis. Stat. § 19.32(2)



Not a “record”

- Drafts, notes, and preliminary documents
- Published material available for sale or at library
- Purely personal property
- Material with limited access rights, such as copyrights or patents

Emails, text messages, and documents on private accounts

- May be “records”
- Content determines whether it is a “record”, not the medium, format or location
- **Personal materials on the same private accounts are not subject to disclosure**

Sufficient request

- May be in writing or oral
- “Magic words” not required
- Must be reasonably specific as to time and subject matter
- Must reasonably describe the information or records requested



Response

- As soon as practicable, without delay:
 - Provide records
 - Deny or partial denial
 - Respond that there are no records



If Task Force receives a request:

- DWD will assist with the response
- Do not delay – forward the request to DWD Legal: OpenRecords@dwd.wisconsin.gov
- Council members will likely need to search for responsive records



Questions?

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