Alabama Code § 36-25-13(d) - The “Revolving Door” Statute

Purpose
Auburn University Human Resources (HR) recently received clarification from the Alabama Ethics Commission regarding re-employment eligibility of employees post-retirement. This new information may impact those employees and/or departments who have staffing plans for post-retirement re-employment via Temporary Employment Services (TES).

Background
An employee’s post-retirement re-employment is subject to the provisions of various entities including, but not limited to, the Retirement Systems of Alabama (RSA) and the State of Alabama Ethics Commission. Among other restrictions, post-retirement re-employment eligibility depends on whether the “Revolving Door” statute applies to the retiree, as the applicability of the statute will determine whether a retiree may be re-employed via TES and, if so, when, and for how long.

Principles
Based on the “Revolving Door” statute (Ala. Code § 36-25-13 (d)) of the Alabama Ethics Act and applicable advisory opinions from the Alabama Ethics Commission, Auburn University employees who were employed as directors, assistant directors, department or division chiefs, purchasing or procurement agents, or in the broader category of “position of authority” may not be re-employed for a period of two years following retirement from Auburn University.

“Position of authority” is the category that would most likely apply to retirees who are seeking post-retirement re-employment via TES. The Alabama Ethics Commission defines “position of authority” to include someone who possessed any of the following discretionary responsibilities:

1. Hiring/firing authority or the ability to influence hiring or firing decisions;
2. Authority to make recommendations regarding hiring or firing;
3. Purchasing or contracting authority or the ability to influence those decisions;
4. Authority to make decisions regarding or to influence the awarding of grants or other awards; and
5. Whether the employee was a designated agent with authority to accomplish any of the actions described in 1-4 above.

Auburn University retirees who were not in a “position of authority” are not subject to the two-year waiting period and may be re-employed via TES in accordance with Personnel Board and RSA rules regarding post-retirement work.

“Transitional Period” Exception
Although § 36-25-13(d) of the Alabama Ethics Act generally prohibits retirees who worked in positions of authority from returning to work at Auburn University for a period of two years, there is an exception to the two-year prohibition if the employee is returning for the specific purpose of providing assistance to the governmental agency during the transitional period following retirement. This exception applies, however, only, if the following conditions are met:

1. The re-employment does not extend for more than three months following the date of retirement;
2. The retiree is at all times in compliance with the return to work requirements of RSA;
3. The compensation paid to the retiree through re-employment, when combined with the monthly retirement compensation paid to the retiree, does not exceed the gross monthly compensation paid to the retiree on the date of retirement; and
4. The re-employment information is submitted to and approved by the Director of the Ethics Commission prior to the date the retiree returns to work.

Action(s)

1. Auburn University employees who are planning to retire and are anticipating returning to work via TES, should notify Abbi Brown, Director of Employment Services, as early as possible.
2. The TES office will make the final determination as to if the retiree is subject to the Ala. Code § 36-25-13 (d).
3. If TES determines that the retiree is subject to the “Revolving Door” prohibition of Ala. Code § 36-25-13 (d) but could potentially return to work under the “transitional period” exception, the retiree should work with the TES office to submit all required information to the Director of the Ethics Commission; at least thirty (30) days in advance of the planned date of retirement. Approval from the Ethics Commission is required prior to the start of an assignment if a retiree is returning to work under the “transitional period” exception of Ala. Code § 36-25-13 (d).

Contact

For questions regarding the “Revolving Door” and/or post-retirement employment via TES, contact:

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