IN THE EXECUTIVE ETHICS COMMISSION
IN THE STATE OF ILLINOIS

SUSAN M. HALING, in her capacity as the EXECUTIVE INSPECTOR GENERAL for the AGENCIES OF THE ILLINOIS GOVERNOR,	)	
Petitioner,	)	
v.	)	24-EEC-002
BRET BENDER,	)	
Respondent.	)	

FINAL ORDER

This cause is before the Executive Ethics Commission ("the Commission") upon Petitioner's Unopposed Motion for Summary Judgment. Petitioner is represented by Assistant Attorneys General Emily Hirsch and Elizabeth Morris on behalf of Attorney General Kwame Raoul. Respondent is represented by private counsel Richard J. Prendergast and Brian C. Prendergast of Croke, Fairchild, Duarte & Beres.

NATURE OF THE CASE

The Office of the Attorney General filed a Complaint on behalf of Petitioner in this matter alleging that Respondent violated revolving door provisions of the State Officials and Employees Ethics Act ("Ethics Act") (5 ILCS 430). In particular, the Complaint alleged that Respondent violated Section 5-45(b) of the Ethics Act in that he had knowingly received compensation for services performed for a non-State entity within one year after termination of his State employment even though he had participated personally and substantially in the licensing or regulation of that entity's subsidiary in the year immediately preceding termination of his State employment. Section 5-45(b) of the Ethics Act provides in relevant part:

> No former officer of the executive branch or State employee of the executive branch with regulatory or licensing authority . . . shall, within a period of one year immediately after termination of State employment, knowingly accept employment or receive compensation or fees for services from a person or entity if the officer or State employee, during the year immediately preceding termination of State employment, participated personally and

> substantially in making a regulatory or licensing decision that directly applied to the person or entity, or its parent or subsidiary.

5 ILCS 430/5-45(b).

Based on the record, including the verified statements and exhibits filed with the Unopposed Motion for Summary Judgment and Unopposed Verified Statement of Mitigation, the Commission makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Petitioner Susan M. Haling is the Executive Inspector General for the Agencies of the Illinois Governor appointed by the Governor of the State of Illinois. 5 ILCS 430/20-10(b).

2. Respondent was employed from April 2019 through May 20, 2022, with the Illinois Department of Financial and Professional Regulation ("IDFPR"), an agency of the Executive Branch of the State of Illinois under the jurisdiction of the Governor.

3. In his capacity as Deputy Director for Cannabis Control, Respondent had authority to develop, implement, and enforce regulatory policy under the Cannabis Regulation and Tax Act (410 ILCS 705/1-1 *et seq.*) and related administrative rules.

4. As a result of that authority, Respondent was a "c-list" employee, meaning his position had been determined to be one that, by the nature of its job duties, may have carried with it the authority to participate personally and substantially in the award of State contracts or in regulatory or licensing decisions in accordance with Subsection (c) of Section 5-45 of the Ethics Act. 5 ILCS 430/5-45(c).

5. Over multiple years of State employment, Respondent participated in ethics trainings which specifically addressed the revolving door provisions and Respondent's duty to report prospective job offers before acceptance for up to one year following departure from State employment. Respondent acknowledged he received those trainings.

6. While Deputy Director, Respondent oversaw, supervised, reviewed, and approved site inspections for Ascend Wellness Holdings Inc.'s ("Ascend") Illinois subsidiary, including inspections occurring on December 7, 2021; January 21, 2022; April 8, 2022; and April 11, 2022.

7. While Deputy Director, Respondent negotiated for terms of employment with Ascend, resulting in acceptance of employment on April 29, 2022.

8. Respondent reviewed and signed the inspection report for the April 8, 2022, inspection on April 30, 2022.

9. Respondent resigned from IDFPR on May 20, 2022.

10. In the year following his resignation, from May 21, 2022, through May 20, 2023, Respondent received compensation from Ascend in the amounts of $178,746.34 in regular pay, $19,494.54 in bonus pay, and stock options with a grant price valuation of $53,623.90.

11. On December 1, 2023, the Attorney General filed a Complaint with the Commission alleging Respondent violated Section 5-45(b) of the Ethics Act.

12. On December 6, 2024, Petitioner filed an Unopposed Motion for Summary Judgment, and Respondent filed an Unopposed Verified Statement of Mitigation.

CONCLUSIONS OF LAW

1. At all times relevant to the allegations set forth in Petitioner's Complaint, Respondent was subject to the provisions of the Ethics Act (5 ILCS 430) and to the jurisdiction of the Executive Ethics Commission with respect to matters arising under the Ethics Act. 5 ILCS 430/20-5(d).

2. Respondent is also subject to the Petitioner's jurisdiction with respect to possible violations of the Ethics Act. *Id.*, § 20-10(c).

3. At all times relevant to the allegations in the Complaint, Respondent had a duty to comply with the provisions of the Ethics Act and with the rules adopted pursuant thereto.

4. Respondent personally and substantially participated in regulation of Ascend's Illinois subsidiary through performance of his duties as Deputy Director for Cannabis Control, including four inspections of Ascend's Illinois subsidiary's facilities.

5. Respondent knowingly accepted employment and compensation from Ascend during the year after his departure from State employment in violation of subsection 5-45(b) of the Ethics Act.

6. The Executive Ethics Commission has jurisdiction over this matter.

ANALYSIS

Motions that are potentially dispositive of the case must be determined by the Commission. 2 Ill. Adm. Code 1620.510(d). Granting summary disposition in an administrative proceeding is comparable to granting summary judgment under Section 2-1005 of the Code of Civil Procedure (735 ILCS 5/2-1005). *Bloom Tp. High School v. Ill. Commerce Comm'n*, 309 Ill. App. 3d 163, 177, 242 Ill. Dec. 892, 903, 722 N.E.2d 676, 687 (1st Dist. 1999); *Cano v. Vill. of Dolton*, 250 Ill. App. 3d 130, 138, 189 Ill. Dec. 883, 889, 620 N.E.2d 1200, 1206 (1st Dist. 1993). Summary judgment is appropriate where "the pleadings, depositions, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." 735 ILCS 5/2-1005(c).

In this case, there is no dispute as to any material fact or law as to whether Respondent violated Section 5-45(b) of the Ethics Act. Respondent provided a verified statement of the material facts that form the basis of Petitioner's Unopposed Motion for Summary Judgment, acknowledged his responsibility for the conduct, and stated that he would not contest or challenge the facts as set forth in his verified statement. Therefore, because there is no triable issue precluding summary judgment, the Commission grants the Motion and finds Respondent has violated Section 5-45(b) of the Ethics Act.

Finally, in the interest of clarity: Section 5-45(f) of the Ethics Act obligates a "c-list" employee, upon being offered but before accepting non-State employment, to seek a determination from the OEIG as to whether the employee can accept. 5 ILCS 430/5-45(f). Section 5-45(h) describes another category of State employees—those on the "h-list"—who are *not* required to seek an OEIG determination before accepting non-State employment. *Id.*; 5 ILCS 430/5-45(h). Respondent was a "c-list" employee, and the record does not show he sought an OEIG determination before accepting employment with Ascend. However, it appears Respondent was incorrectly advised he was an "h-list" employee. *See* Petitioner's Exhibit 1 in support of the Unopposed Motion (the underlying OEIG Report). Petitioner does not allege a violation of Section 5-45(f) of the Ethics Act in the Complaint, and it is not at issue here.

PENALTY

Section 50-5(a-1) of the Ethics Act authorizes the Commission to levy an administrative fine in an amount of up to three (3) times the total annual compensation that would have been obtained in violation of section 5-45. 5 ILCS 430/50-5(a-1). The record reflects that when Respondent accepted employment with Ascend, the total annual compensation he would have obtained was at least $178,746.34 in salary plus opportunities for bonuses and stock options. His actual compensation from Ascend between May 2022 and May 2023 was $198,240.88.

The parties have not recommended specific penalties in this matter and have left this issue to the Commission's discretion. Commission rule establishes 14 aggravating and mitigating factors the Commission may consider in assessing an appropriate fine:

b) When the Commission is determining an appropriate fine pursuant to Section 50-5 of the Act after a finding of liability, the Commission may consider the following mitigating and aggravating factors:

1) nature of violations;

2) the scope of the violation or scheme of violations;

3) the use of title or position;

4) the extent of the use of resources, money, time to the State;

5) the extent of a respondent's intent or knowledge of the facts surrounding the violation;

6) premeditation;

7) the duration of any series of violations;

8) position of authority;

9) involvement of others, especially other State employees;

10) self-disclosure;

11) cooperation;

12) in the absences of substantial aggravating factors, a self-employed person's incidental business or employment matters that are not reported under Section 5-45(f) of the Act in a timely manner or involve subject matter not directly related to prior State employment and that entail monetary amounts of less than $5,000 are deemed to be offenses warranting a warning or minimal fine;

13) prior disciplinary record or Ethics Act violation; and

14) years of service and type of service with the State.

2 Ill. Adm. Code 1620.530(b).

Respondent’s violation is unambiguous: He accepted employment with Ascend that the Ethics Act prohibited him from accepting. Petitioner’s Unopposed Motion for Summary Judgment establishes Respondent was in a position of substantial authority and responsibility with respect to Ascend’s Illinois facilities. He supervised, reviewed, and personally approved inspection reports with material impacts upon Ascend’s operations and potential success. While there is no evidence in the record of a premeditated *quid pro quo* arrangement or Respondent’s prospective employment affecting his regulatory decisions, the timeline of events has an appearance of impropriety. For example, on April 11, 2022, Respondent supervised an on-site inspection of a dispensary Ascend was in the process of purchasing. Ascend sent him an employment offer letter less than two weeks later on April 22, 2022. He accepted the offer a week after that on April 29, 2022—and reviewed and signed an inspection report for an Ascend Illinois dispensary the next day. Altogether, the record shows Respondent negotiated for and accepted employment with Ascend despite (a) his then-ongoing personal and substantial involvement in making regulatory decisions that applied to Ascend's subsidiary, (b) the prohibitions of the Ethics Act, (c) training regarding those prohibitions, and (d) his knowledge, however imperfect, that his post-State employment was subject to limitations.

On the other hand, Respondent's Unopposed Verified Statement of Mitigation includes Respondent's forthright admission that he violated the Ethics Act. He appears to have cooperated fully with the OEIG's investigation, saving the State resources. Respondent additionally emphasizes his post-State employment with Ascend was specifically structured to preclude his involvement with Illinois-related matters by directing his efforts to a distinct geographical region. Moreover, there is no evidence Respondent's violation involved any other State employees, had a material impact upon State operations, or resulted in regulatory decisions that should have been decided differently. And, as Respondent notes, there is no evidence of any prior disciplinary action or Ethics Act violations, though that is tempered by the fact the instant matter arose within his first three years of executive branch employment.

WHEREFORE, the Executive Ethics Commission hereby GRANTS Petitioner's Unopposed Motion for Summary Judgment and:

A. Finds that Respondent violated 5 ILCS 430/5-45(b); and

B. Pursuant to 5 ILCS 430/50-5(a-1), levies against Respondent an administrative fine in the amount of $100,000 for his violation of 5 ILCS 430/5-45(b).

This is a final decision. Commission rules (2 Ill. Adm. Code 1620) do not provide for reconsideration.

SO ORDERED.

ENTERED: January 21, 2025

[redacted]
Chair

[redacted]
Commissioner

[redacted]
Commissioner

[redacted]
Commissioner

[redacted]
Commissioner

[redacted]
Commissioner

Commissioner

Commissioner

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

SUSAN HALING, in her official capacity as Executive Inspector General for the Agencies of the Illinois Governor, Petitioner, v. BRET BENDER, Respondent.	No. 24-EEC-002

NOTICE OF FILING

To: See Attached Service List.

PLEASE TAKE NOTICE that on December 6, 2024, we caused the Illinois Attorney General's Unopposed Motion for Summary Judgment in the above-captioned matter to be filed with the Executive Ethics Commission of the State of Illinois, a copy of which is hereby served upon you.

KWAME RAOUL
Illinois Attorney General

By: *<u>/s/ Emily Hirsch</u>*

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Counsel for Petitioner

CERTIFICATE OF SERVICE

I, the undersigned, an attorney, hereby certify that I caused copies of the foregoing to be served upon on those individuals identified in the attached Service List by electronic mail, on this December 6, 2024.

/s/ Emily Hirsch
Emily Hirsch

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IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

SUSAN HALING, in her official capacity as Executive Inspector General for the Agencies of the Illinois Governor, Petitioner, v. BRET BENDER, Respondent.	 No. 24-EEC-002

PETITIONER'S UNOPPOSED MOTION FOR SUMMARY JUDGMENT

Illinois Attorney General Kwame Raoul, on behalf of Petitioner Susan M. Haling, the Executive Inspector General for the Agencies of the Illinois Governor, hereby submits this Unopposed Motion for Summary Judgment (the "Unopposed Motion") against Respondent Bret Bender in the above-captioned matter. In connection with the Petitioner's Unopposed Motion, Respondent has agreed that he will not contest or otherwise challenge the Unopposed Motion, which Respondent had an opportunity to review prior to filing.

In support of this Unopposed Motion, Petitioner states as follows:

JURISDICTIONAL FACTS AND APPLICABLE LAW

1. Petitioner Susan M. Haling is the Executive Inspector General for the Agencies of the Illinois Governor ("OEIG"), duly appointed by the Governor of the State of Illinois pursuant to 5 ILCS 430/20-10.

2. The Illinois Department of Financial and Professional Regulation ("IDFPR") is an agency of the Illinois Governor.

3. Respondent Bret Bender was the Deputy Director of Medical Cannabis at IDFPR from April 16, 2019 until December 2019. Bender subsequently served as the Deputy Director of

Cannabis Control at IDFPR from December 2019 until his resignation from state employment, effective May 20, 2022. (Verified Statement of Anthony Wall, Ex. 1, p. 2).

4. The essential functions of the Deputy Director of Cannabis Control include:

a. developing, implementing, prioritizing and monitoring policies and procedures for defining regulatory action to be taken for violations of the Cannabis Regulation and Tax Act or its regulations; the receipt, review and reporting functions applied to cannabis dispensary and dispensary agent disciplinary cases; the evaluation of new disciplinary case referrals to registered medical cannabis dispensaries and dispensary agents;

b. overseeing disciplined registrants, consisting of, but not limited to, monitoring reports, maintaining protocol compliance, interviewing disciplined registrants, and referring violations of prescribed discipline for enforcement actions;

c. managing section staff who regularly visit the registrant sites to determine compliance with the Cannabis Regulation and Tax Act and its regulations; and

d. recommending regulatory action, such as imposing fines, against the registrants for violations of the Cannabis Regulation and Tax Act and its regulations.

(*Id.* at 2-3).

5. Essentially, in his role at IDFPR, Bender made recommendations to [redacted], his supervisor and IDFPR's Director of the Division of Professional Regulation, about whether to pursue prosecutions for a dispensary's infractions or citations. He also made recommendations regarding fine amounts and other enforcement decisions that took place during the year prior to his departure from IDFPR on May 20, 2022. (*Id.* at 4).

6. As a State employee, Bender was subject to the State Officials and Employees Ethics Act and its revolving door prohibition (the "Ethics Act"), 5 ILCS 430/5-45 *et seq.*, and the jurisdiction of the Executive Ethics Commission (the "Commission"), with respect to matters arising under the Ethics Act. 5 ILCS 430/20-5(d).

7. During the relevant period, and pursuant to the Ethics Act, Bender's position as the Deputy Director of Cannabis Control meant that he, "by the nature of [his] duties, may have [had]

the authority to participate personally and substantially in…regulatory or licensing decisions," and was therefore a "c-list" employee. 5 ILCS 430/5-45 (b),(c). (Wall Stmt., Ex. 1 at 2-3).

8. Moreover, as a c-list employee, Bender was required to comply with the Ethics Act, which provides in relevant part that:

> No former officer of the executive branch or State employee of the executive branch with regulatory or licensing authority, or spouse or immediate family member living with such person, shall, within a period of one year immediately after termination of State employment, knowingly accept employment or receive compensation or fees for services from a person or entity if the officer or State employee, during the year immediately preceding termination of State employment, participated personally and substantially in making a regulatory or licensing decision that directly applied to the person or entity, or its parent or subsidiary.

5 ILCS 430/5-45(b).

9. In the event of a violation of the Ethics Act's revolving door provisions, Section 50- 5 permits the Commission "to levy an administrative fine . . . of up to 3 times the total annual compensation that would have been obtained in violation of Section 5-45." *Id.* § 50-5(a-1).

UNCONTESTED MATERIAL FACTS

Respondent's Ethics Act Training and Knowledge

10. Bender's state employment with IDFPR began on April 16, 2019. (Wall Stmt. Ex. 1 at 2).

11. Respondent participated in the annual mandatory ethics training required for Illinois employees in 2019 and 2020. (Wall Stmt. Ex. 2).

12. These trainings specifically addressed the Ethics Act's revolving door provisions, including that restrictions apply to any State employee who, in the year prior to leaving State employment, participated personally and substantially in making a regulatory or licensing decision

that directly applied to the prospective employer or its parent or subsidiary. *See* 5 ILCS 430/5-45(b). (Wall Stmt. Ex. 3 at 20-23; Ex. 4 at 12-15).

13. In an email communication with IDFPR's Senior Deputy General Counsel [redacted] in August 2019, Bender acknowledged that he read the Ethics Act and understood the duties and restrictions imposed by the Ethics Act's revolving door provisions, as well as the sanctions that might follow from a failure to abide by the Ethics Act. (Wall. Stmt. Ex. 5).

IDFPR's Licensing and Regulation of Ascend Illinois

14. Pursuant to the Cannabis Regulation and Tax Act, a cannabis dispensary must be licensed by IDFPR to operate in Illinois. 410 ILCS 705/15-5(b)-(c). IDFPR is also responsible for enforcing the provisions of the Cannabis Regulation and Tax Act that relate to the oversight and registration of dispensing organizations. 410 ILCS 705/5-15.

15. As a function of its regulatory and licensing responsibilities, IDFPR may "[e]xamine, inspect, and investigate the premises, operations, and records of dispensing organization applicants and licensees," and "conduct investigations of possible violations of [the Cannabis Regulation and Tax] Act pertaining to dispensing organizations and dispensing organization agents." 410 ILCS 705/15-5(d).

16. Consistent therewith, IDFPR may not issue an Adult Use Dispensing Organization License until it has inspected the dispensary site, its proposed operations, and has determined that all are compliant with the Cannabis Regulation and Tax Act and local zoning laws. 410 ILCS 705/15-135; 410 ILCS 705/45.

17. IDFPR may also issue citations for minor violations of the Cannabis Regulation and Tax Act, 410 ILCS 705/15-140, and is responsible for enforcing the provisions of the Compassionate Use of Medical Cannabis Program Act. 410 ILCS 130/15(c).

18. Ascend Wellness Holdings, Inc. ("Ascend") is a cannabis operator based in New York City that owns, manages, and operates cannabis cultivation facilities and dispensaries in multiple states, including Illinois.

19. In his role at IDFPR, Bender was involved in IDFPR inspections of Ascend Illinois facilities. Specifically, during the year preceding his departure from IDFPR,

a. Bender was involved in an inspection of an Ascend Illinois dispensary conducted on December 7, 2021. In response to concerns raised to him by the inspector, Bender reviewed photos sent by the inspector and researched a potential building code issue with the dispensary's facilities, including a determination that because the property was likely not compliant with the building code, the dispensary's floor remodel plan should not be approved by IDFPR. Ultimately, five violations were found and total fines of $3,750 were assessed as a result of this dispensary inspection;

b. Bender was the supervisor who reviewed an inspection of an Ascend Illinois dispensary conducted on January 21, 2022. Bender reviewed the report for errors and to ensure that the report was clearly written by the inspector and signed it on March 12, 2022 in a section labeled "Supervisor's review and date";

c. Bender acted as the supervisor who reviewed an inspection of an Ascend Illinois dispensary conducted on April 8, 2022. Bender reviewed the inspection report and signed it on April 30, 2022, in a section labeled "IDFPR Supervisor/Lead Investigator"; and

d. Bender oversaw and supervised the inspection of a dispensary that was in the process of being purchased by an Ascend subsidiary that was conducted on April 11, 2022. Bender was on site as the IDFPR supervisor of the inspection, and he participated in the inventory count. The purpose of this inventory count was to ensure that any infractions or inventory issues related to the prior owner, HealthCentral Illinois, LLC, were properly documented prior to Ascend taking over the facility.

(Wall Stmt. ¶¶ 16-19).

<u>Bender Discusses Employment with Ascend</u>

20. During the period between mid-March and mid-May 2022, Ascend Senior Vice President [redacted] and others contacted Bender regarding a possible future role at Ascend. (Wall Stmt. Ex. 6, 7).

21. In an email dated April 22, 2022, a member of Ascend's recruiting force submitted an employment offer letter to Bender for a position as a Regional Vice President in Regulatory Compliance. (Wall Stmt. Ex. 8). The offer identified "Ascend Wellness Holdings, Inc." as the employer. (*Id.*). Bender's offer letter included information concerning Respondent's proposed hiring date of May 31, 2022, his annual salary of $190,000, and his eligibility to participate in an incentive plan, under which he would be eligible for a "one-time equity grant targeted at 30% of [his] base salary prorated based on [his] date of hire." (Wall Stmt. Ex. 9). The offer letter also provided that Bender's equity grant "will be in the form of restricted stock units and stock options and will be issued following your date of hire." (*Id.*).

22. Throughout these interactions with Ascend, Bender was aware of his obligations under Illinois law, including the Ethics Act. Early on in his interactions with Ascend, Bender explained in a text message, "Sorry for the slow reply, but ethics laws prevent me from engaging in these talks on state time and an endless stream of phone calls this morning prohibited me from going off state time until just now." (Wall Stmt. Ex. 6).

<u>Bender Leaves IDFPR for Ascend</u>

23. On April 29, 2022, Bender accepted employment with Ascend Wellness Holdings, Inc., at which time he was still a Deputy Director of Cannabis Control at IDFPR. (Wall Stmt. Ex. 9).

24. On May 20, 2022, Bender resigned from his position as Deputy Director of Cannabis Control at IDFPR. (Wall. Stmt. Ex. 1 at 2).

25. On or around June 1, 2022, he began working as the Regional Vice President, Regulatory Compliance for Ascend. In connection with this position, Respondent received compensation from Ascend. (Wall Stmt. Ex. 10).

26. Ascend's corporate organization chart identifies Bender as "Regional Vice President, Regulatory Compliance, NJ, MA, PA, OH," and shows that he reports to Ascend's Vice President of Compliance. (Wall Stmt. Ex. 11.).

27. During the one year period of prohibited employment following his resignation as Deputy Director of Cannabis Control at IDFPR, May 21, 2022 through May 20, 2022, Respondent received 178,746.34 in regular pay and a $19,494.54 bonus from Ascend, for a total of $198,240.88.

28. Respondent also earned an award of stock options and restricted stock units that Ascend collectively valued at at least $53,623.90.[1]

ANALYSIS

29. Granting summary disposition in an administrative proceeding is comparable to granting summary judgment under Section 2-1005 of the Illinois Code of Civil Procedure. 735 ILCS 5/2- 1005; *Bloom Tp. High School v. Illinois Commerce Comm'n*, 309 Ill. App. 3d 163, 177, 722 N.E. 2d 676, 687 (1st Dist. 1999). Accordingly, summary judgment is appropriate where "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." 735 ILCS 5/2-1005(c); *accord Thompson v. Fein*, 21-EEC-002 (Apr. 23, 2021), at pp. 4-5.

RESPONDENT VIOLATED SECTION 5-45(b) OF THE ETHICS ACT

30. Under Section 5-45(b) of the Ethics Act, a former State employee cannot, "within a period of one year immediately after termination of State employment, knowingly accept

[1] For paragraphs 27 and 28, counsel for all parties worked diligently to secure a declaration from third-party Ascend prior to filing. However, due to turnover at the company, Ascend's declaration has been delayed. For purposes of this motion, and based on earlier data submitted by Ascend, counsel for both parties believe the amounts in the motion are accurate. Counsel will separately file a declaration from Ascend when it is ready, and, if necessary, the OEIG will amend its motion to update the amounts in paragraphs 27 and 28.

employment or receive compensation or fees for services" if she or he participated personally and substantially in making a regulatory or licensing decision that directly applied to the person or entity, or its parent or subsidiary during the year immediately preceding termination of State employment. 5 ILCS 430/5-45(b).

31. During the year immediately preceding his departure from IDFPR, Bender participated personally and substantially in IDFPR regulatory decisions in connection with dispensaries owned by Ascend's Illinois subsidiary.

32. The Commission has previously found that facility inspections performed by agencies like IDFPR are regulatory in nature, because they "relat[e] to the activity of checking whether a business is working according to official rules or laws." *In re: Jayaraj*, No. 21-EEC-005 (July 8, 2021) at 7 (internal citation omitted).

33. The Commission has further found personal and substantial involvement in such regulatory decisions where an employee's participation is limited to review and approval of a subordinate's work. *In re: Aranowski*, No. 24-EEC-003 (July 5, 2024) at 5-6.

34. This rule applies even where the employee performing the review and approval is not the final decisionmaker: "the Ethics Act 'requires neither that the employee has initiated nor made the final decision for the [revolving door] restriction to apply.'" *Id.*, *citing In re Fayant,* 23-EEC-001 (Sept. 1, 2022) at 12.

35. Nonetheless, within one year after termination of his State employment, Bender accepted employment and received compensation from Ascend.

36. Based on the uncontested record, Bender violated Section 5-45(b) of the Ethics Act, 5 ILCS 430/5-45(b).

CONCLUSION

For the reasons set forth above, Petitioner requests that the Commission enter an order:

A. Finding that Respondent violated Section 5 ILCS 430/5-45(b) of the Ethics Act;

B. Imposing appropriate administrative fines for Respondent's violations of the Ethics Act's revolving door prohibitions, as established in this Unopposed Motion for Summary Judgment; and

C. Granting any other relief that is equitable and just.

Dated: December 6, 2024
Chicago, Illinois

KWAME RAOUL
ILLINOIS ATTORNEY GENERAL

On behalf of Susan M. Haling, in her capacity as the Executive Inspector General for the Agencies of the Illinois Governor, Petitioner

By: /s/ *Emily Hirsch*
Assistant Attorney General

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Exhibit A

**IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS**

SUSAN HALING, in her official capacity as Executive Inspector General for the Agencies of the Illinois Governor, Petitioner, v. BRET BENDER, Respondent.	No. 24-EEC-002

VERIFIED STATEMENT OF ANTHONY WALL

I, Anthony Wall, do hereby state under oath as follows: the statements in this Verified Statement are based on my personal knowledge, professional and personal experience, and my direct involvement in the matters described herein.

1. I joined the Office of the Executive Inspector General for the Agencies of the Illinois Governor ("OEIG") as an Investigator on July 1, 2022.

2. As an OEIG Investigator, I am directly responsible for issuing requests for documents, business records, emails, and other communications and information potentially relevant to the matters being investigated; reviewing, organizing, and understanding the significance of various documents and related information so gathered; working with other investigators to identify persons of interest in connection with the matters under investigation; developing particularized witness interview plans, including the selection of specific documents, records, communications, and other evidence pertinent to those matters under investigation and about which each prospective witness is likely to have personal knowledge; conducting witness interviews as a principal investigator or co-investigator; preparing or reviewing interview reports

made to accurately memorialize each interview conducted; presenting to a team of senior OEIG personnel a detailed summary of the evidence gathered during the course of an investigation; and gathering and organizing the investigative records for transmittal to and review by an Ultimate Jurisdictional Authority or agency head and the Illinois Attorney General, pursuant to the Ethics Act review and recommendation obligations imposed under 5 ILCS 430/20-50.

3. Since joining OEIG, I have overseen or participated in investigations of matters involving alleged violations of the Ethics Act as well as violations of a variety of other civil and criminal provisions of Illinois law. This includes the interview of Respondent Bret Bender that I and co-Investigator Joseph Loscudo conducted at OEIG's Chicago Office on April 18, 2023.

4. Attached to my Verified Statement are exhibits obtained by OEIG in response to requests for documentation issued by our Office in connection with its investigation of matters underlying Petitioner's Complaint, and an exhibit that contains a true and accurate copy of the resulting OEIG Investigative Report.

5. Attached as Exhibit 1 to this Verified Statement is a true and correct copy of the OEIG Investigative Report for Investigation Case No. 22-01599, the case involving Respondent's revolving door violation.

6. Attached as Exhibit 2 to this Verified Statement is a true and accurate OEIG record of Respondent's mandatory Ethics Act training in which he participated as an IDFPR employee.

7. Attached as Exhibit 3 to this Verified Statement is a true and accurate copy of the revolving door section of the 2019 annual Ethics Act training in which he participated.

8. Attached as Exhibit 4 to this Verified Statement is a true and accurate copy of the revolving door section of the 2020 annual Ethics Act training in which he participated.

9. Attached as Exhibit 5 to this Verified Statement are true and accurate copies of an email chain between Respondent and [redacted], the Senior Deputy General Counsel for the IDFPR.

10. Attached as Exhibit 6 to this Verified Statement are true and accurate copies of a text message chain between Respondent and Ascend Senior Vice President [redacted] about a possible future "role" at Ascend.

11. Attached as Exhibit 7 to this Verified Statement are true and accurate copies of email communications between Respondent and [redacted], the Manager of Talent Acquisition at Ascend, about a "potential opportunity" for Respondent as "VP of Compliance."

12. Attached as Exhibit 8 to this Verified Statement is a true and accurate copy of an email from a member of Ascend's recruiting force containing an employment offer to Respondent as Regional Vice President in Regulatory Compliance for Ascend Wellness Holdings, Inc."

13. Attached as Exhibit 9 to this Verified Statement is a true and accurate copy of a signed offer letter containing a start date of May 31, 2022, an annual salary of $190,000, and eligibility to participate in an incentive plan, under which he would be eligible for a "one-time equity grant targeted at 30% of [his] base salary prorated based on [his] date of hire.

14. Attached as Exhibit 10 to this Verified Statement is a true and correct copy of a paystub reflecting payment from "AWH Mgmt Grp LLC" to Respondent for a period of employment beginning August 1, 2022.

15. Attached as Exhibit 11 to this Verified Statement is a true and correct copy of Ascend's corporate compliance organization chart, which identifies Respondent as "Regional Vice President, Regulatory Compliance, NJ, MA, PA, OH."

16. During Respondent's interview with OEIG investigators on April 18, 2023, Respondent confirmed that he was personally involved with an inspection of an Ascend dispensary on December 7, 2021. He explained that the inspector sent him photos she had taken of the site that displayed a characteristic of the property that she thought might not be compliant with the applicable building code. Respondent said he conducted research himself and determined that the property was likely not compliant with the building code and that he contacted the relevant building department to report the issue. He stated that he also contacted the Director of IDFPR's Division of Professional Regulation, and that the two of them agreed that the site remodel could not be approved because all Illinois dispensaries must comply with local ordinances and building codes. He said he could not recall what specific instructions he gave the inspector or the details of what they discussed. When shown a copy of the citation for five violations that resulted from this inspection, Respondent confirmed that the citation was a regulatory action against the Ascend dispensary.

17. During his OEIG interview, Respondent confirmed that he was the supervisor who reviewed the inspection of an Ascend Dispensary on January 21, 2022, though he was not physically present at the time of the inspection. He explained that his review of the report involved checking it for errors and ensuring that it was clearly written by the inspector. He signed the report in the space for "IDFPR Supervisor/Lead Investigator."

18. During his OEIG interview, Respondent confirmed that he acted as the supervisor who reviewed an inspection of an Ascend Dispensary conducted on April 8, 2022. He was not present for the site inspection. He reviewed the report to ensure that it was complete, free of typos, and made sense. He signed the report in the space for "IDFPR Supervisor/Lead Investigator."

19. During his OEIG interview, Respondent confirmed that he was the supervisor for an inspection of a dispensary that was in the process of being purchased by an Ascend subsidiary that was conducted on April 11, 2022. He confirmed that he was on site for the inspection, and participated in the inventory count.

Under penalties provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in my Verified Statement are true and correct, except as to the matters therein stated to be on information and belief, and as to such matters, I certify as aforesaid that I believe the same to be true.

Dated: December 6, 2024

Anthony Wall Digitally signed by Anthony Wall Date: 2024.12.06 10:17:24 -06'00'

Anthony Wall
Office of the Executive Inspector General
for the Agencies of the Ilinois Governor
69 West Washington Street, Ste. 3400
Chicago, IL 60602

Exhibit 1

Office of Executive Inspector General for the Agencies of the Illinois Governor

Investigation Case No. 22-01599

As required under the State Officials and Employees Ethics Act (Ethics Act), this Final Report is submitted to the appropriate ultimate jurisdictional authority and the head of each State agency affected by or involved in the investigation, if appropriate. Pursuant to the Ethics Act, this Final Report and any attachments are CONFIDENTIAL and are not subject to the Freedom of Information Act. The Final Report and attachments may be disclosed only as the ultimate jurisdictional authority or head of each affected or involved State agency deems necessary in order to effect any related disciplinary action.

I. ALLEGATION

On July 1, 2022, the Office of Executive Inspector General (OEIG) received a complaint alleging that former Illinois Department of Financial and Professional Regulation (IDFPR), Cannabis Control Deputy Director Bret Bender may have violated the Revolving Door provisions of the State Officials and Employees Ethics Act (Ethics Act) by accepting employment with a company that he regulated.

II. BACKGROUND

A. Adult Use And Medical Cannabis Programs

In 2014, Illinois legalized medical cannabis use, and as of January 1, 2020, the Cannabis Regulation and Tax Act legalized adult use (recreational) cannabis in the State.[1] Illinois law directs IDFPR to enforce provisions regarding licensure and oversight of cannabis dispensing organizations.[2] IDFPR established two divisions, the Medical Cannabis Section and the Cannabis Control Section to administer the licensure and regulation of the State's medical and adult use programs, respectively.

B. Revolving Door Prohibition

The Revolving Door provision of the Ethics Act generally prohibits all State employees from accepting non-State employment within one year of separation from State employment when the employee personally and substantially participated in the agency's regulatory or licensing decisions that directly applied to the employer, or its parent or subsidiary.[3] To enforce this provision, State agencies must determine which employees, by the nature of their duties, may have the authority to participate personally and substantially in regulatory or licensing decisions and place them on a list, commonly referred to as a "c-list."[4] Any c-list employee who is offered non-State employment during their State employment or within one year of separation from State employment must notify the OEIG prior to accepting such non-State employment.[5] The OEIG then makes a determination within ten days whether accepting the employment is prohibited by law.[6] An employee who violates the Revolving Door provision of the Ethics Act may be subject to a fine of up to three times the total annual compensation the employee would have obtained from the prohibited employment.[7]

The Ethics Act also prohibits State employees who work for agencies that regulate cannabis business license holders, and participated personally and substantially in the award of licenses

[1] 410 ILCS 130 and 410 ILCS 705/1-5(a).
[2] 410 ILCS 130/15(c), 410 ILCS 705/5-15, and 410 ILCS 15-5(b).
[3] 5 ILCS 430/5-45(b). The Revolving Door provision also applies the one-year employment prohibition to State employees who, in the one year prior to leaving State employment, personally and substantially participated in the award or fiscal administration of State contracts valued at $25,000 or more to the prospective employer, or its parent or subsidiary. *See* 5 ILCS 430/5-45(a).
[4] 5 ILCS 430/5-45(c).
[5] 5 ILCS 430/5-45(f).
[6] *Id*.
[7] 5 ILCS 430/50-5(a-1).

under the Cannabis Regulation and Tax Act, from holding a non-passive ownership interest in any cannabis license under the Act during State employment and for a period of two years after leaving State employment.[8]

III. INVESTIGATION

A. Mr. Bender's State Employment History

IDFPR personnel documentation shows that Mr. Bender began working at the agency on April 16, 2019, as Medical Cannabis Deputy Director. In December 2019, Mr. Bender transferred to a position called Cannabis Control Deputy Director. He resigned from that position effective May 20, 2022.

B. Ascend Wellness Holdings, Inc. And Offer Made To Mr. Bender

During its investigation, the OEIG learned that Mr. Bender was employed by Ascend Wellness Holdings, Inc. (Ascend) after he left State employment.[9] In response to a subpoena for records related to Mr. Bender's communications and employment with Ascend, Ascend provided the OEIG with a copy of an employment offer letter dated April 26, 2022, and addressed to Mr. Bender, among other documents. The offer letter stated that Mr. Bender's full-time employment with the company was to begin May 31, 2022.

According to corporate filings with the U.S. Securities and Exchange Commission (S.E.C.), Ascend owns, manages, and operates cannabis cultivation facilities and dispensaries in multiple states, including Illinois.[10] The filings state that Ascend is headquartered in New York, NY, and it operates through its subsidiaries. Ascend's website shows that it operates nine dispensary stores throughout Illinois.[11]

C. OEIG Revolving Door Records For Mr. Bender

The OEIG ran a search in the State's Revolving Door Tracking System and confirmed that both of Mr. Bender's positions at IDFPR were on the c-list. The OEIG searched its own records and determined that it had not received a Revolving Door notification from Mr. Bender.

D. Mr. Bender's Role In Licensing And Inspections Of Dispensaries

1. IDFPR Position Description and Resume

The Position Description for the Cannabis Control Deputy Director includes the following regarding the position's essential functions:

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[8] 5 ILCS 430/5-45(a-10).
[9] Unless stated otherwise in this report, the term "Ascend" refers to the parent corporate entity Ascend Wellness Holdings, Inc.
[10] *See* https://www.awholdings.com/document-library/all-sec-filings.
[11] *See* https://www.awholdings.com/our-stores.

Develops, implements, prioritizes and monitors policies and procedures for defining regulatory action to be taken for violations of the [Cannabis Regulation and Tax] Act or Rules; the receipt, review and reporting functions applied to cannabis dispensary and dispensary agent disciplinary cases; the evaluation of new disciplinary case referrals to registered medical cannabis dispensaries and dispensary agents.

Responsible for disciplined registrants consisting of, but not limited to, monitoring reports, maintaining protocol compliance, interviewing disciplined registrants, and referring violations of prescribed discipline to enforcement.

Manages section staff who regularly visit the registrant sites to determine compliance with the Act and Rules.

Recommends regulatory action, such as imposing fines, against the registrants for violations of the Act and Rules.[12]

Ascend provided a copy of Mr. Bender's resume to the OEIG, which contained the following description of his experience as "Director of Licensing and Regulation Unit for Dispensaries at the Illinois Department of Financial and Professional Regulation – 2019-Present":

In 2019, with 6 months to prepare and no full-time staff, simultaneously led the launch of the adult use cannabis program on January 1, 2020 and an application process that received 2,589 dispensary license applications. To date, the 12-person unit I oversee has brought in more than $1 million in penalty fees.

2. Interview of [redacted]

On January 20, 2023, the OEIG interviewed [redacted], who said she has been the Director of IDFPR's Division of Professional Regulation since June 2019, and that she supervised Mr. Bender from the time she joined IDFPR until he left State employment. [redacted] explained that she was involved in placing Mr. Bender in the Cannabis Control Deputy Director position when the Cannabis Control Section was created,[13] and that at the time Mr. Bender was helping put together the agency's application for the first round of adult use dispensary licenses. [redacted] said that as Cannabis Control Deputy Director, Mr. Bender's duties included ensuring IDFPR-licensed medical dispensaries that applied to sell adult use cannabis were up and running by January 1, 2020; hiring and supervising Cannabis Control Section inspectors; and working to develop a dispensary application and score card for the next round of dispensary license applications.[14]

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[12] Each annual performance evaluation in Mr. Bender's personnel file had a confirmation from his supervisor that his job description accurately and directly related to objectives being evaluated. The objectives listed in the performance evaluations were consistent with the essential functions in the Cannabis Control Deputy Director position description.

[13] CMS records indicate that the Medical Cannabis and Cannabis Control Deputy Director positions are exempt.

[14] Performance evaluation forms in Mr. Bender's personnel file signed in [redacted] name for the periods ending April 1, 2020 and April 1, 2021, stated that Mr. Bender's ability to develop a plan to complete work included "Same Site licenses approved before January 1…Secondary Site inspections conducted in timely manner," and "Continuing to build the internal infrastructure for enforcement and licensing," respectively.

[redacted] said that as Cannabis Control Deputy Director, Mr. Bender conducted reviews and inspections of dispensaries, and that when he was present for inspections he was in charge of the IDFPR staff on site. [redacted] said that when the Cannabis Control Section was initially set up, Mr. Bender was often present during inspections because the section was not yet fully staffed and did not have very many inspectors. She added that as the section hired more inspectors, Mr. Bender would still be present for inspections to train inspectors and show them how to conduct an inspection. [redacted] described Mr. Bender as meticulous and hands-on when it came to inspections and the training of inspectors. She said Mr. Bender usually conducted inspections prior to IDFPR's approval of a dispensary's ownership change, with the assistance of two or three other inspectors. [redacted] stated that dispensary inspections are regulatory in nature.

In addition, [redacted] said that Mr. Bender would make recommendations to her about whether to pursue prosecutions for a dispensary's infractions or citations, and that Mr. Bender would ensure a dispensary was compliant with regulations before a final dispensary license was issued.[15] [redacted] said that she did not review the inspection reports completed by Mr. Bender and Cannabis Control Section staff, but that she did review the citation reports they drafted. She explained that the citation reports are drafted like pleadings and substantiate any fines that may be levied against a dispensary.

[redacted] said that Mr. Bender also was heavily involved in the license renewal process for dispensaries. She said that the initial round of adult use dispensary licenses were issued in 2019 to open for business on January 1, 2020, and required renewal in Spring 2021. She said after that, all adult use licenses issued by IDFPR required renewal on a two-year cycle.

[redacted] said she was familiar with Ascend, saying the company owns several dispensaries in Illinois under different names. She said that IDFPR licenses and regulates Ascend's dispensaries in the State and that she has the final say in determining any enforcement actions the agency takes against Ascend and its subsidiaries. [redacted] stated that when Ascend was opening adult use dispensaries, she relied on Mr. Bender's assessment on whether to issue a license for the dispensary locations.

[redacted] said that when the Cannabis Control Section was initially set up, citations drafted by inspectors were cases of "first impression" for adult use dispensaries, so she and Mr. Bender met regularly to review and determine a fee schedule for allocating fines. [redacted] said that in order to have consistency in fines levied against medical and adult use dispensaries, she included both Mr. Bender and the Medical Cannabis Deputy Director in the weekly citation meetings. [redacted] said that she had the final say on the amounts of monetary fines levied against dispensaries but added that she generally followed Mr. Bender's recommendations on the amounts. She said that regarding enforcement action decisions, Mr. Bender would make recommendations and provide historically pertinent information to her about the dispensary at issue. [redacted] said that, for example, Mr. Bender may have recommended a higher fine because of a recurring issue at a particular dispensary.

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[15] Pursuant to its legislative mandate to regulate the conduct of IDFPR-licensed professions, the Division of Professional Regulation's Statewide Enforcement Section conducts investigations and prosecutions of, among other things, irregularities discovered during inspections of licensed cannabis dispensaries. *See* 20 ILCS 2105-15.

[redacted] said that in May 2021, Mr. Bender told her that a cannabis craft grower was interested in hiring him and that he wanted a raise and upward mobility at IDFPR. She said she replied by telling him that he should be sure to take the necessary steps with the OEIG before accepting such employment. [redacted] said that approximately a year later, in 2022, Mr. Bender provided notice to her when he ended his employment with IDFPR, and that when she asked him what he was going to do, he said he had nothing lined up. She said that when Mr. Bender left she did not tell him that his position was on the c-list, nor did she know if he sought any advice about his responsibilities as a member of the c-list. [redacted] said that given her understanding of the Ethics Act's Revolving Door prohibition, "it would be a big problem" if Mr. Bender were working for Ascend. She said she has not been in contact with Mr. Bender since he left State employment, and she did not know if he was working for Ascend.

3. Interview of [redacted]

On June 15, 2023, the OEIG interviewed IDFPR Deputy Director of Statewide Enforcement [redacted]. [redacted] said that from January 27, 2020, to July 16, 2021, she was IDFPR Assistant Deputy Director of Enforcement for the Cannabis Control Section and that Mr. Bender was her supervisor during that time. [redacted] said that when she was Assistant Deputy Director, she would participate in regular citation meetings with [redacted], Mr. Bender, and the Medical Cannabis Deputy Director. She said that during the meetings they would discuss batches of citations that had been drafted and that [redacted] would make decisions after hearing their opinions, including Mr. Bender's, regarding whether or not a citation should be issued against a dispensary.

E. IDFPR Actions Affecting Ascend

IDFPR provided records regarding inspections and license renewals related to Ascend and its subsidiaries from April 2019 to May 2022, the same period as Mr. Bender's employment with the State.

1. Mr. Bender's Involvement in Inspections of Ascend Subsidiaries

Mr. Bender's name appeared in four inspection reports relating to Ascend Illinois dispensaries[16] during the year before he left IDFPR employment, as summarized below:

December 7, 2021, Inspection of Dispensary 1

IDFPR records reflect that an inspection was conducted on December 7, 2021 of Dispensary 1.[17] The inspection report discussed multiple safety issues observed at the site, and stated, "No approval was given at this time, but concerns were addressed with DD Bender… after the inspection." Records reflect that five violations were ultimately found, and total fees of $3,750

[16] During his OEIG interview, Mr. Bender confirmed that each of the four dispensaries are affiliated with Ascend. Ascend's website also reflects its ownership of dispensaries at the locations described in the inspection reports. *See* https://www.awholdings.com/our-stores.
[17] Ascend's annual public report filing with the S.E.C. for 2021 reflected its ownership of Dispensary 1. *See* https://www.awholdings.com/sec-filings/sec-filing/10-k/0001628280-22-005776.

were assessed. During their interviews, when shown the inspection report, [redacted] and [redacted] said they were not involved in this inspection but that it appeared that the inspection related to a floorplan change by the dispensary.[18]

January 21, 2022, Inspection of Dispensary 2

IDFPR records reflect that an inspection was conducted on January 21, 2022, of Dispensary 2.[19] On the last page of the inspection report, in a section labeled "Supervisor's review and date," there is a digital signature in Mr. Bender's name dated March 12, 2022. [redacted] said the inspection report's narrative indicated that a citation would have been issued against the dispensary and that Mr. Bender would have reviewed and signed a citation report as a result.[20] [redacted] explained that based on her experience reviewing and signing inspection reports, Mr. Bender's signature meant he had reviewed the report for completeness and that it contained the necessary explanations of findings.[21]

April 8, 2022, Inspection of Dispensary 3

IDFPR records reflect that an inspection was conducted on April 8, 2022, of Dispensary 3. On the last page of the inspection report, in a section labeled "IDFPR Supervisor/Lead Investigator e-signature," there is an electronic signature in Mr. Bender's name dated April 30, 2022. [redacted] said that Mr. Bender's signature on the Dispensary 3 inspection report meant that he had factually reviewed the report and would have been able to articulate reasons why a citation was written as a result of the inspection. [redacted] said that she understood Mr. Bender's signature to represent that he had reviewed the investigator's inspection. She said that it was important for the supervisor to ensure the reports had clear explanations of any violations observed by the IDFPR investigator because the reports could be used as the basis of a citation or prosecution by the agency against the dispensary.

April 11, 2022, Inspection of Dispensary 4

IDFPR records reflect that an inspection was conducted on April 11, 2022, of Dispensary 4. The inspection report stated, "Deputy Director Bret Bender…present to assist with full inventory count." [redacted] and [redacted] said that the inspection report indicated Mr. Bender had been on site for the inspection. [redacted] explained that the inspection report showed that the inspection was conducted because of the dispensary's change of ownership and that an issue

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[18] None of the five violations in the resulting citation were related to the floorplan issue. The citation listed violations for failure to do the following: provide required patient educational materials; secure keys; store product in a locked cabinet; receive approval and/or retain documentation for two years; and ensure agents receive at least eight hours of annual training.

[19] Ascend's annual public report filing with the S.E.C. for 2022 reflected its ownership of Dispensary 2, Dispensary 3, and Dispensary 4. *See* https://www.awholdings.com/sec-filings/sec-filing/10-k/0001628280-23-008136.

[20] Regulatory and licensing records provided by IDFPR for the period of Mr. Bender's employment with the agency (April 2019 to May 2022) did not include citations related to the Dispensary 2, Dispensary 3, or Dispensary 4 inspections described in this report.

[21] During her interview, [redacted] said that Mr. Bender was involved in the Dispensary 1 and Dispensary 2 medical cannabis inspections because he would sometimes fill in when the Medical Cannabis Deputy Director was unavailable or when the position was vacant.

discovered during a change of ownership inspection could result in the delay of ownership transfer. She added that in those instances Mr. Bender would provide information to [redacted] and the IDFPR legal department and recommend whether an ownership transfer should be delayed.

2. Mr. Bender's Involvement in License Renewals for Ascend Subsidiaries

The OEIG also identified eight letters on Division of Professional Regulation letterhead that are signed in Mr. Bender's name and addressed to Ascend subsidiaries in Illinois in March and April 2021. The letters have the heading "Notice of Early Approval Adult Use Dispensing Organization License Renewal," and stated that the Division of Professional Regulation had approved the Ascend subsidiaries' renewal of their adult use dispensing licenses, and stated that enclosed with the letters were the license renewal certificates.

F. Revolving Door Information And Trainings Provided To Mr. Bender

The Ethics Act requires all State employees to complete an annual ethics training program within 30 days after beginning State employment and then annually thereafter.[22] The OEIG reviewed its records and confirmed that Mr. Bender completed the annual Ethics Training for State Employees on April 16, 2019, and December 13, 2020.[23] Both years' training materials stated that the Ethics Act's Revolving Door restrictions apply to any State employee who, if in the year prior to leaving State employment, participated personally and substantially in making a regulatory or licensing decision that directly applied to the prospective employer, or its parent/subsidiary. The training materials stated that if the employee participated in a such a decision, the employee would be prohibited from accepting an offer of employment from the prospective employer for one year after leaving State employment. The training materials also stated that c-list employees who, during – and within one year after leaving – state employment, want to accept an employment offer from a non-state employer must notify the OEIG and seek a determination from the OEIG before accepting the offer.

IDFPR provided the OEIG with an email dated August 15, 2019, from an agency Senior Deputy General Counsel to Mr. Bender, notifying him that his Medical Cannabis Deputy Director position was subject to the Revolving Door policy of the Ethics Act and requesting that he sign the Revolving Door Acknowledgment form. The form quoted the Ethics Act's Revolving Door prohibitions and contained the following statements:

> I understand that I must read the attached provisions of the Act in their entirety and that my signature below certifies that I have read and understand those provisions in addition to the contents of this document.

[22] 5 ILCS 430/5-10.

[23] A review of OEIG records did not locate any record of Mr. Bender completing annual ethics training in 2021 or 2022. During his OEIG interview, Mr. Bender stated that he thought he had taken ethics training in 2021 and did not know why he would not have done so. He said he was not sure if he completed ethics training in 2022 because that was the year he left State employment.

An email reply was dated the same day with the statement "Acknowledged" and attached the form signed in Mr. Bender's name. The IDFPR records produced in the investigation did not include a similar notification or acknowledgement for Mr. Bender's Cannabis Control Deputy Director position.[24]

On November 30, 2022, the OEIG interviewed [redacted]. [redacted] said he has worked for IDFPR since 2003, serving as Chief Administrative Law Judge the last four or five years. He said that in March 2022, he was assigned the Ethics Officer duties while the interim Ethics Officer was on a leave, including completing Revolving Door forms and answering questions regarding Revolving Door rules. [redacted] said he was made aware of Mr. Bender's resignation and that he sent Mr. Bender an email about the Revolving Door statutory requirements but mistakenly told Mr. Bender that he was on the h-list.[25] He said he thought Mr. Bender was on the h-list because of his job description as Deputy Director.

The OEIG obtained the email, which was dated May 11, 2022, and confirmed that [redacted] wrote Mr. Bender:[26]

> It is my understanding that you will be leaving the Department…Just a reminder: As you know, you are a 'h' list employee under the State Ethics Act 5 ILCS 430/5-45. As such, you are prohibited from accepting certain non-state employment for one year after leaving the State. Additionally, since you were involved in the regulation of cannabis other prohibitions apply. (See section 5-45)…If you need assistance in determining to what extent a potential employer is licensed, regulated or otherwise involved with the Department, please let me…know.

[redacted] said in his interview Mr. Bender did not respond to or acknowledge having received the email.[27]

G. Mr. Bender's Communications And Employment Agreement With Ascend

[24] IDFPR provided information regarding the agency's Ethics Officers, c-list tracking, and Revolving Door notifications in 2021 and 2022. The agency's current Ethics Officer stated that a search of the former Ethics Officer's (no longer a State employee) records did not locate any acknowledgment of Revolving Door notifications for IDFPR employees who were promoted, transferred or hired in 2021 for positions on the c-list. The agency provided records showing that c-list tracking and Revolving Door notifications were being done from 2017 to 2020 and beginning again in 2022.

[25] The Ethics Act lists several State positions – known as the "h-list" – with high-levels of managerial oversight (e.g., constitutional officers, agency heads, chief procurement officers, chiefs of staff, department heads, etc.) who are subject to the Revolving Door Prohibition. These employees, regardless of whether they participated personally or substantially in the awarding of a contract or the making of the regulatory or licensing decision, are prohibited from knowingly accepting non-State employment within one year after leaving State employment when the prospective employer was party to a State contract (of at least $25,000) or was the subject of a regulatory or licensing decision involving the employee's State agency during the year preceding the employee leaving State employment. 5 ILCS 430/5-45(h).

[26] IDFPR time report records show that Mr. Bender reported working a full day on May 11, 2022, and reported working an additional six days before his State employment ended on May 20, 2022.

[27] During his OEIG interview, Mr. Bender said he did not recall receiving [redacted]'s email. Mr. Bender also stated that he did not know the difference between a c-list and h-list designation.

Ascend provided the OEIG with copies of communications and documents related to its employment offer to Mr. Bender. Copies of instant message exchanges show that Ascend Senior Vice President [redacted] contacted Mr. Bender on March 22, 2022, asking to discuss a Vice President (VP) of Compliance role at Ascend. Subsequent emails and instant messages indicate that they had phone conversations in late March through late April. Emails also reflect that Mr. Bender had phone calls in early April with employees in Ascend's recruiting department – [redacted] and [redacted].

In an email dated April 7, 2022, [redacted] requested approval from [redacted] for details of Mr. Bender's potential employment offer, including a location of "Home Office – IL" and listing [redacted] as his manager. [redacted] responded, "More to come – it will be either a Sr Director or Regional VP title for Bret…." In an electronic chat log showing messages exchanged between [redacted] and [redacted], he wrote on April 21, 2022, "Bret is on board with Regional VP of Compliance."

In an email from [redacted] to Mr. Bender dated April 22, 2022, she asked him if he was available to discuss an offer with Ascend. Later that day, a series of internal Ascend emails showed that [redacted] processed the offer of Regional VP, Regulatory Compliance to Mr. Bender, with details including "Ascend Wellness Holdings, Inc." as the "Entity" and a location listing Ascend's corporate headquarters. A few minutes later, [redacted] sent a DocuSign email to [redacted] that appeared to be a draft of an email with a link to Mr. Bender's electronic offer letter for [redacted]'s review and approval.[28] The email stated, "Bret Bender, Congratulations on your offer of employment with Ascend!" An April 26, 2022, electronic message from [redacted] to [redacted] stated:

> Can you send Bret an offer under MassGrow? He has an issue with it being AWH because he works for the state. I can explain. [redacted] and [redacted] are aware of request.

That same day, [redacted] sent another DocuSign email to [redacted] for approval. It was a similar draft of the email with a link to Mr. Bender's electronic offer letter, except it stated, "Congratulations on your offer of employment with Massgrow."[29] In an email to Mr. Bender on April 28, 2022, [redacted] stated, "Hi Bret, I sent over another letter under the MassGrow entity. Wanted to see whether you had any questions?"

Ascend provided the OEIG with a copy of an April 26, 2022 letter offering employment to Mr. Bender. The document was on the letterhead of MassGrow but also had "Ascend Wellness Holdings, Inc." on the address line, with the same address as Ascend's corporate headquarters in New York. The letter stated:

> Dear Bret,

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[28] The OEIG requested a copy of this original Ascend offer letter to Mr. Bender, but Ascend stated that after searching its records, it was unable to locate the original offer letter.

[29] During her OEIG interview, [redacted] stated that MassGrow is an Ascend-owned subsidiary entity that operates only in Massachusetts.

> On behalf of MassGrow, LLC & Mass Mgmt Grp, LLC (the "Company"), I am very pleased to extend this offer of employment as **Regional VP, Regulatory Compliance**…
>
> Your effective date of hire as a regular, full-time employee is **May 31, 2022**…
>
> You will receive an annual salary of **$190,000**…
>
> You are eligible to participate in the Company's Annual Incentive Plan with a target of **35%** of base salary earned during the FY22 performance period…
>
> You are eligible for a one-time equity grant targeted at 30% of your base salary prorated based on your date of hire. The grant will be in the form of restricted stock units and stock options and will be issued following your date of hire.

The offer letter was signed in [redacted]'s name, and it was signed in Mr. Bender's name as "Accepted and agreed" on April 29, 2022. In an electronic message that day, [redacted] wrote to [redacted], "Good news! Bret accepted." In an email to [redacted] on May 13, 2022, [redacted] wrote:

> Just wanted to make sure we hire Bret under the appropriate entity . . . As a reminder, we edited his offer letter to state Mass Grow despite the fact he would be a corp employee. Can you just confirm that we hire him as a corp employee, the offer was for his purposes.

Ascend provided emails dated May 11 and 13, 2022, between Mr. Bender and Ascend's Senior Manager – Corporate HR, in which they discussed the shipping and receipt of a laptop and other computer equipment for Mr. Bender's new position.

Ascend also provided a paystub with compensation information for employee Bret Bender for the pay period August 1-14, 2022, showing a gross pay amount of $7,307.70 for the period and total year-to-date gross pay of $39,461.58. The company listed on the paystub is "AWH Mgmt Grp LLC" with the address for Ascend's corporate headquarters.

Ascend provided a corporate organizational chart labeled "AWH Compliance" which shows personnel in its compliance department. Mr. Bender is listed in the document as the Regional Vice President, Regulatory Compliance, "NJ, MA, PA, OH." It shows that he reports to the VP of Compliance, a position that, according to the chart, oversees multiple compliance-related personnel, including the Illinois Director of Compliance. The document has no reference to MassGrow.

H. Interview Of Ascend's VP Of Talent Acquisition [redacted]

On February 17, 2023, the OEIG interviewed [redacted], Ascend's VP of Talent Acquisition. [redacted] said she has been employed by Ascend since November 2021 and explained that she leads the team responsible for recruiting employees for Ascend. She said that she was the supervisor of [redacted] before she ([redacted]) left Ascend in 2022.[30]

[30] The OEIG contacted [redacted] to schedule an interview, but she declined to interview with the OEIG.

[redacted] claimed that Mr. Bender's offer letter was changed to an offer from MassGrow instead of from Ascend because Ascend wanted to ensure it was clear that Mr. Bender was going to focus on Ascend operations in Massachusetts and other states not related to Illinois. She said that MassGrow is one of Ascend's entities that operates facilities only in Massachusetts and Pennsylvania. [redacted] said she did not know if Mr. Bender requested any alterations to his offer of employment. [redacted] said that [redacted] drafted the offer letters for Mr. Bender and that although the offer letter was changed from Ascend to MassGrow, the position description for Regional VP of Compliance did not change.

[redacted] said [redacted]'s May 13, 2022 email noted that Mr. Bender was an Ascend corporate employee because corporate employees are paid using a different payment system than the system used to pay employees of entities such as MassGrow. [redacted] said that Mr. Bender reports to Ascend's VP of Compliance, who reports to the Senior VP of Strategy ([redacted]). [redacted] said she believed there was a reason that Mr. Bender needed to be shielded from involvement in Ascend's Illinois operations, but she claimed she could not recall whether she had specific discussions with him or with [redacted] and [redacted] about that issue.

[redacted] stated that the Long Term Incentive Plan in Mr. Bender's offer letter entitled him the opportunity to own equity in Ascend, the publicly-held corporation. [31] She added that employees at the Director level and above are offered the equity opportunity, but she was unable to say how many employees are included in that group.

I. Interview Of Bret Bender

On April 18, 2023, the OEIG interviewed Mr. Bender, who confirmed that he began employment with Ascend Wellness Holdings, Inc. on May 31, 2022, as a Regional VP of Compliance.

Participation in IDFPR Decisions Affecting Ascend

Mr. Bender confirmed that Ascend owns a subsidiary, Ascend Illinois LLC, that controls nine licenses to operate cannabis dispensaries in Illinois. He said IDFPR issued those licenses and regulates the Ascend-owned dispensaries in Illinois. Mr. Bender said that IDFPR's regulation of Ascend dispensaries is to ensure the company is following the provisions of the Cannabis Regulation and Tax Act.

Mr. Bender said he participated in secondary site inspections and inventory audits of Ascend dispensaries while he was at IDFPR, although he denied that his participation in the regulatory and licensing process was substantial. He said that he oversaw and supervised inspections of Ascend dispensaries and that whenever he was on site for inspections, he was the highest-ranking IDFPR employee present. Mr. Bender recalled participating in both a new site

[31] Section 5-45(a-10) of the Ethics Act restricts State employees from having an ownership interest, other than a passive interest in a publicly traded company, for two years after employment, in a business that was awarded a cannabis licenses any time during a State employee's tenure with the regulating agency. 5 ILCS 430/5-45(a)(10).

inspection and a remodel inspection of Ascend dispensaries. Mr. Bender said that he personally had not issued fines or discipline against Ascend, adding that [redacted] had signed off on all citations since October 2019. However, Mr. Bender said that he was involved in meetings with [redacted] regarding IDFPR citations against dispensaries, explaining that they would discuss batches of citations that were pending [redacted]' approval and that when she asked questions he would offer his opinion.

Dispensary 1 Inspection – December 7, 2021

When shown a copy of the inspection report for the December 7, 2021 inspection of Dispensary 1, Mr. Bender said that the on-site IDFPR inspector contacted him with concerns about a remodel being conducted at the time. He explained that the inspector sent him photos she had taken of the site that displayed a characteristic of the property that she thought might not be compliant with the applicable building code. Mr. Bender said he conducted research himself and determined that the property was likely not compliant with the building code and that he contacted the relevant building department to report the issue. He stated that he also contacted [redacted] and that the two of them agreed that the site remodel could not be approved because all Illinois dispensaries must comply with local ordinances and building codes. He said he could not recall what specific instructions he gave the inspector or the details of what they discussed. Mr. Bender explained that although he was overseeing the Cannabis Control Section at the time, he was contacted by the inspector for this medical cannabis inspection because the then-Medical Cannabis Deputy Director was not sufficiently responsive to questions from inspectors. He said that every medical cannabis site also had an adult use license, so he, as the Cannabis Control Deputy Director, could answer inspectors' questions.

Mr. Bender said he could not recall if IDFPR issued a citation related to this inspection. When Mr. Bender was presented with a copy of the citation for five violations relating to the December 7, 2021 inspection described above, Mr. Bender said he was not familiar with this particular citation. However, he said it was fair to say that the citation was a regulatory action against Dispensary 1 resulting from an inspection carried out by IDFPR that showed the licensee was not in compliance with agency rules.

Dispensary 2 Inspection – January 21, 2022

Investigators presented Mr. Bender with a copy of the inspection report for the January 21, 2022 inspection of Dispensary 2. After reviewing the inspection form, Mr. Bender said the report was regarding a site inspection in which he was not present. Mr. Bender said he had been on site for the inventory audit for an ownership change, however – although he could not recall when that occurred. Mr. Bender confirmed that he signed the report on March 12, 2022, in his role as supervisor. He explained that his review of the report would have involved checking it for any errors and ensuring it was clearly written by the inspector because if a citation was prepared as a result of the inspection, it would need to cite the correct rules and regulations. Mr. Bender said that he reviewed and signed the medical cannabis inspection report because at that time he was the only IDFPR employee who could do so due to the departures of the Medical Cannabis Deputy

Director and the Assistant Deputy Director of Enforcement.[32] Mr. Bender stated that he could not recall if a citation was issued based on the inspection, or if he was involved in a meeting with [redacted] to discuss any related citation.

Dispensary 3 Inspection – April 8, 2022

Investigators presented Mr. Bender with a copy of the inspection report for the April 8, 2022 inspection of Dispensary 3. Mr. Bender said that he was not present for the site inspection, but confirmed that he reviewed the report and applied his electronic signature, dated April 30, 2022, in the space for "IDFPR Supervisor/Lead Investigator." He said he reviewed and signed the inspection report because there were no other supervisors in the Medical Cannabis Section at that time, so the responsibility to review and sign the report defaulted to him. Mr. Bender stated that he reviewed the inspection report for typos, completion, and to ensure the narrative made sense. He said there were no citations drafted as a result of the inspection, and that there would not have been any citation meetings scheduled for this inspection before he left IDFPR. Although he said he was not present for the April 8, 2022 inspection, Mr. Bender said he recalled being on-site for an ownership change inventory audit at the dispensary, but he could not recall when that occurred.

Dispensary 4 Inspection – April 11, 2022

Investigators presented Mr. Bender with a copy of the inspection report for the April 11, 2022 inspection of Dispensary 4. Mr. Bender confirmed that he was on site at the dispensary for the inspection and said the statement in the report's Narrative Summary that said "Deputy Director Bret Bender…present to assist with full inventory count" was true. He stated that he was the IDFPR supervisor at the inspection and that he assisted in the inventory count. Mr. Bender explained that his signature is not in the "IDFPR Supervisor/Lead Investigator" section of the report because he had not gotten to sign it before leaving State employment. He said that he had left State employment before any citation meeting would have occurred.

Licensing

Mr. Bender said that he assisted in the creation of the adult-use license application by developing a score sheet for applicants, and that in the early years of his tenure at IDFPR, he sent out the renewal notices for licensees. He said that when medical cannabis dispensaries applied for secondary site adult-use licenses, he went to those sites to ensure they were meeting regulations. He stated that he also participated in the license renewal process for dispensaries, saying he reviewed applications during his first year as Cannabis Control Deputy Director. He said that by 2021 the renewal process became standardized through an online procedure where a licensee would check boxes on a checklist attesting to compliance, paid license renewal fees, and was then issued a renewal notice by the Assistant Deputy Director of Administration.

Employment with Ascend Wellness Holdings

[32] During their OEIG interviews, Mr. Bender and [redacted] were asked what would happen if a supervisor did not sign an inspection report. Mr. Bender said he did not know what the consequence would be because it had never come up. [redacted] also said she did not know what the consequence would be, adding that it might be questioned during an audit.

Mr. Bender said that his communications with Ascend about an employment opportunity began in April 2022 when a friend who was a registered lobbyist in Illinois asked him if he was interested in leaving State employment.[33] Mr. Bender stated that he said yes, and the friend arranged for Mr. Bender to speak with Ascend's President, [redacted], the following week. Mr. Bender said he spoke with [redacted] on the phone, and that they discussed how Ascend did not have a compliance department and that [redacted] wanted to take the company in a better direction.

Mr. Bender said that he subsequently spoke with Ascend's Senior VP of Strategy, [redacted], three times on the phone about Ascend's compliance department and what he (Mr. Bender) could do for the company. Mr. Bender explained that Ascend was purchasing cannabis licenses in new states and that he was experienced in licensing and operations in such an environment. He said that [redacted] thought this experience would be an asset for Ascend, and the company offered him the position of Regional VP of Compliance. Mr. Bender added that Ascend originally offered him the position of VP of Compliance but that the company found another person to fill that role and changed his offer to the Regional VP of Compliance position. He said his region was any new market that Ascend entered, and his responsibility would be to handle licensing and regulatory requirements in those states. Mr. Bender stated that he told [redacted] that he (Mr. Bender) could not be involved in any of Ascend's operations in Illinois, adding that this was not an issue for Ascend because the company wanted him to focus on new markets. He said at that time Ascend had an external attorney who handled compliance for Illinois operations.

Mr. Bender said that [redacted] was his main point of contact at Ascend regarding the details of the position and that he had also been in contact with [redacted] and [redacted] in the company's human resources department. Mr. Bender said he did not negotiate the salary or terms of his employment with Ascend and simply accepted the offer made to him. However, he said he asked [redacted] if there was a company outside of Illinois he could work for because he did not want to violate his Revolving Door requirements. Mr. Bender stated that [redacted] replied by telling him that Ascend was the umbrella company that everyone worked for. When presented with a copy of the April 26, 2022 offer letter described above, Mr. Bender confirmed that it contained the details of his compensation and that he signed the letter on April 29, 2022. He explained that the letter listed "MassGrow" on the letterhead because he was vaguely aware of his Revolving Door requirements and after receiving an initial offer letter from Ascend he had asked that the offer letter be changed to an entity outside of Illinois. Mr. Bender acknowledged that the MassGrow offer letter also listed "Ascend" on the top of the document. He confirmed that he is compensated by Ascend in the form of salary and bonus, and he added that the Ascend stock options referenced in the offer letter are worth $60,000 and will be awarded to him over a four-year period.

Mr. Bender confirmed he reports to Ascend's VP of Compliance, who oversees compliance in each of the seven states where Ascend operates, including Illinois. He said Ascend has a Compliance Director who handles compliance in Illinois and also reports to the VP of Compliance. Mr. Bender explained that although there is no formal, written guidance that details his exclusion

[33] Mr. Bender said that to his knowledge, the lobbyist had no role in the negotiation of his employment with Ascend.

from Ascend's Illinois operations, his Ascend colleagues know not to consult with him on any Illinois-related matters. He said that when Illinois operations are discussed on conference calls, he drops off the calls, and he does not contribute to any email threads that discuss Illinois matters. When presented with a copy of the "AWH Compliance" organizational chart described above, Mr. Bender said that it was accurate except that he no longer handles compliance for New Jersey but does handle Maryland.

Revolving Door Restrictions

Mr. Bender confirmed that he had taken the State's annual Ethics Act training in 2019 and 2020, and that he believed he had taken it in 2021 but was not sure why State records do not show that he had taken it that year. He said he did not recall whether he had taken the training in 2022 before he left State employment. Mr. Bender explained that his understanding of Revolving Door is that there are certain restrictions on a former State employee when that employee accepts certain jobs in Illinois. He claimed he did not know what a "c-list" or "h-list" designation was, nor did he recall being notified of any such designation that applied to him. When presented with a copy of the Revolving Door Acknowledgment form described above, Mr. Bender claimed he did not recall seeing the document but acknowledged that he signed it.

Mr. Bender stated that unless he had done insufficient research on Illinois' Revolving Door law, he did not believe there was a reason he could not work for Ascend. He said he did not seek guidance or clarification from anyone – including the agency's Ethics Officer, General Counsel, or [redacted] – on the Ethics Act's Revolving Door requirements. He said he did not seek a Revolving Door determination from the OEIG, saying he had just wanted to move on. Mr. Bender said he did not recall receiving [redacted]'s May 11, 2022 email with the subject "Revolving Door," and said it was uncommon for him to receive emails from [redacted] so he did not pay much attention to it. When presented with a copy of [redacted]'s email, Mr. Bender said he agreed that he (Mr. Bender) had been involved in the regulation of cannabis in Illinois and that he had not consulted with anyone after receiving the email. He said he did not tell anyone at IDFPR who his new employer was because he did not think anyone needed to know.

IV. ANALYSIS

The Ethics Act prohibits State employees from accepting non-State employment with an entity within one year of separation from State employment when the employee personally and substantially participated in making a regulatory or licensing decision in the year immediately prior to leaving State employment that directly applied to the entity, or its parent or subsidiary.[34] As Cannabis Control Deputy Director at IDFPR, Mr. Bender participated personally and substantially in at least four regulatory decisions that applied to Ascend dispensaries in Illinois during the year prior to his departure from State employment on May 20, 2022.

As Mr. Bender admitted, he played an active role in each of the four Ascend inspections; moreover, he took action relating to two of the inspections at the same time that he was in communication with Ascend about a job:

[34] 5 ILCS 430/5-45(b).

Event Date	Mr. Bender's Role in the Inspection	Communication Between Ascend and Mr. Bender
December 7, 2021 (Inspection date)	Mr. Bender admitted that he researched possible building code issues with the Dispensary 1 property, then raised a concern with [redacted], and they agreed that the dispensary's floor remodel plan should not be approved by IDFPR until the issue was fixed.	
January 21, 2022 (Inspection date)	Mr. Bender admitted that he, as supervisor, reviewed the report for the inspection of Dispensary 2.	
March 12, 2022	Mr. Bender electronically signed the inspection report for the Dispensary 2 inspection conducted on January 21, 2022.	
March 22, 2022		Initial text messages between [redacted] and Mr. Bender regarding Ascend employment, which led to phone calls and interviews through April 2022.
April 8, 2022 (Inspection date)	Mr. Bender admitted that he reviewed the report for the inspection of Dispensary 3.	
April 11, 2022 (Inspection date)	Mr. Bender admitted he was on site for the inspection of Dispensary 4 and that he was the IDFPR supervisor for the inspection.	
April 22, 2022		Email from Ascend to Mr. Bender asking to discuss employment offer.
April 28, 2022		Email from Ascend to Mr. Bender asking if he had any questions about the offer letter dated April 26, 2022.
April 29, 2022		Date of Mr. Bender's signature on the offer letter.
April 30, 2022	Mr. Bender electronically signed the inspection report for Dispensary 3 inspection conducted on April 8, 2022.	

The Executive Ethics Commission (EEC) has consistently held that these types of inspections and reports are considered to be regulatory decisions.[35] In the *In re Jayaraj* decision, the EEC stated that the Appellant, a State employee on the c-list, had performed inspections of the prospective employer's facilities and that the inspections were regulatory in nature because they were "conducted for the purpose of ensuring compliance with statute, regulation, and permit requirements or conditions." The EEC stated that the inspection report prepared by the Appellant was considered a regulatory decision because it was part of a decision-making process that could result in an enforcement action. Furthermore, the EEC interpreted the Appellant's participation to be personal and substantial because it was direct and essential to the regulatory decision.

In each of the four Ascend inspections noted above, Mr. Bender participated in either the inspection itself or the review and approval of the inspection report. He provided consultation to an inspector and [redacted] on a building code issue that resulted in denial of an Ascend

[35] *See In re* Jayaraj, 21-EEC-005 (July 8, 2021), *In re* Esuerte, 13-EEC-019 (April 26, 2013), and *In re* Inman, 13-EEC-013 (February 14, 2013) (each concluding that the State employees' inspections of the prospective employers' facilities were decisions that were regulatory in nature).

dispensary's remodel plan; he participated on-site as the supervisor of an inspection of an Ascend dispensary; and he reviewed and signed as the approving supervisor two inspection reports for Ascend dispensaries. Accordingly, Mr. Bender participated in inspections/inspection reports, as well as, supervised inspectors including signing regulatory documents. In sum, based on his own description of his role in these inspections – and confirmed by [redacted] and [redacted]'s description of his role at IDFPR – Mr. Bender had a direct and essential role in the decision process that could have resulted in enforcement actions (or lack thereof) against the Ascend dispensaries. As such, Mr. Bender was prohibited from accepting employment with Ascend for one year after he left State employment.

Mr. Bender's last day of State employment was May 20, 2022, and he began working at Ascend on May 31, 2022, as Regional VP of Compliance. During his OEIG interview, Mr. Bender confirmed that he is employed by Ascend, the parent corporation that owns subsidiary Illinois dispensaries regulated by IDFPR. He said he reports to Ascend's VP of Compliance, who oversees compliance in each state where the company operates, including Illinois. [redacted] also confirmed that Mr. Bender works for the parent corporation.

During his OEIG interview, Mr. Bender claimed that in order to avoid a Revolving Door violation, he has set up a system at Ascend that excludes him from any involvement in the company's Illinois operations, and that his request to have his offer letter come from a non-Illinois Ascend subsidiary (MassGrow) was an attempt to further delineate his separation from Illinois-related matters. However, whether or not Mr. Bender has walled himself off from Ascend's Illinois operations is not relevant to a Revolving Door analysis. Due to his participation in the above-referenced regulatory decisions, the Ethics Act prohibited Mr. Bender from accepting employment with Ascend for one year after leaving State employment on May 20, 2022 regardless of the type of work he was doing for Ascend. For these reasons, there is reasonable cause to believe that Mr. Bender violated the Revolving Door provision of the Ethics Act by accepting employment with Ascend, where he began working on May 31, 2022.[36]

V. FINDING AND RECOMMENDATIONS

Based on the evidence detailed above, the OEIG determines **THERE IS REASONABLE CAUSE TO BELIEVE THE FOLLOWING:**

- **FOUNDED** – Bret Bender violated the Revolving Door provision of the Ethics Act by accepting employment with Ascend within one year of leaving State employment.

[36] Mr. Bender also failed to notify the OEIG of his employment offer from Ascend as is required of c-list employees by the Ethics Act's Revolving Door provision. However, the interim Ethics Officer erroneously emailed Mr. Bender that he was on the h-list (although Mr. Bender said he did not recall receiving that email), *see* 5 ILCS 430/20-23(3), and h-list employees do not need to notify the OEIG of their employment offers. Thus, the OEIG is not making a finding regarding Mr. Bender's failure to notify the OEIG.

Because Mr. Bender has already left State employment, the OEIG recommends that IDFPR place a copy of this report in the appropriate personnel file.

Date: October 17, 2023

Office of Executive Inspector General
for the Agencies of the Illinois Governor
69 West Washington Street, Ste. 3400
Chicago, IL 60602

By: **Joseph Loscudo**
Assistant Inspector General

Anthony Wall
Investigator

Exhibit 2

Office of Executive Inspector General
for the Agencies of the Illinois Governor
www.inspectorgeneral.illinois.gov

FIRST NAME	MIDDLE INITIAL	LAST NAME	BIRTH DATE (MMDD)	AGENCY	COURSE TITLE	DATE COMPLETED	START DATE/TIME	END DATE/TIME
Bret	L	Bender	0920	Department of Financial and Professional Regulation	Ethics Training for State Employees 2019	4/16/2019		
Bret	L	Bender	0920	Department of Financial and Professional Regulation	Ethics Training Program for State Employees and Appointees 2020	12/13/2020		

Initials OEIG Date Produced MC 7-26-22 Source: OneNet

Exhibit 3

Ethics Training for State Employees 2019

Office of Executive Inspector General
for the Agencies of the Illinois Governor

Introduction and Instructions

The State Officials and Employees Ethics Act (Ethics Act), 5 ILCS 430, requires state employees to complete, at least annually, an ethics training program conducted by their state agency. See 5 ILCS 430/5-10. It also requires new employees to complete ethics training within 30 days of the commencement of employment or appointment. This training program is intended to allow you to meet your obligation to comply with those requirements.

This training course has been developed in accordance with requirements of the Ethics Act. It has been developed for this purpose under the direction of the Office of Executive Inspector General for the Agencies of the Illinois Governor (OEIG), in consultation with the Illinois Executive Ethics Commission (EEC) and the Office of the Attorney General.

While online, you must carefully read and review all of the information contained in this section and the lessons that follow. Without interruption, this training course should take approximately 60 minutes, on average, to complete.

If you have questions about the administration of ethics training, please contact your ethics officer, which can be found at www2.illinois.gov/oeig/ethics/pages/ethicsofficers.aspx.

Introduction and Instructions

By law, when you have finished this introduction and all of the following lessons, in order to be considered to have fulfilled your duty to train, you must certify your completion of this course. The certification process is at the end of the training. It is automated and will require you to select "yes" in response to the following statement at the end of the course:

"I certify that I have carefully read and reviewed the content of, and completed, the 2019 Ethics Training Program for State Employees. Furthermore, I certify that I understand that my failure to comply with the laws, rules, policies, and procedures referred to within this training course may result in disciplinary action up to and including termination of State employment/appointment, administrative fines, and possible criminal prosecution, depending on the nature of the violation."

Introduction and Instructions

What happens if I don't complete or certify my completion of this ethics training program?

The failure to complete or certify completion of the training is a violation of the Ethics Act. It may result in disciplinary action by your state agency and administrative action by the EEC. For example, the EEC levied a $500 fine against a tenured University of Illinois professor for failing to complete ethics training. See EEC decision #11-EEC-009.

At the end of the training, this online program generates a certificate of completion. You may print the certificate, save an electronic copy, or decline to do either, at your discretion.

Lesson 1: Administration of Ethics

Subjects in Lesson 1:

- Duties of Ethics Officers

- Duties of the EEC
- Duties of the OEIG
- Reporting Misconduct
- Whistle Blower Protection
- Penalties

You will be asked questions like:

Raymond works for a state agency. One of his subordinate employees files a complaint with DHR. Raymond learns of the complaint, which he believes is a waste of DHR's time and should instead have been handled internally. Raymond later makes up a list of employees who should undertake training, which may qualify them for promotions. Raymond includes the names of several employees of the unit, but excludes the employee who lodged the complaint, because Raymond does not think that employees who file complaints outside the agency should get the training. Are Raymond's actions appropriate?

Look for guidance in the next few pages.

Ethics Officers

Every state agency, including departments, boards, task forces, and commissions, has an ethics officer. According to the Ethics Act, the ethics officer is designated by the head of the agency to serve three key functions. The ethics officer will:

- interpret the Ethics Act for the agency, based on case law and decisions of the EEC;
- serve as a liaison between the agency and the OEIG; and
- review Statements of Economic Interests filed by agency employees.

In addition, Executive Order 16-04 requires ethics officers to promptly notify the OEIG of any allegations of misconduct after receiving such information.

In certain agencies, ethics officers also play a role handling ex parte communications. We'll discuss this later in the training.

The Executive Ethics Commission

The Executive Ethics Commission (EEC), in conjunction with the executive inspectors general and the attorney general, is responsible for the oversight of compliance with, implementation of, and enforcement of the Ethics Act.

The EEC consists of nine appointed commissioners, no more than five of whom may be of the same political party. It exercises jurisdiction over all officers and all employees of the state agencies under the governor, lieutenant governor, attorney general, secretary of state, comptroller, and treasurer, as well as the nine state public universities and four Chicago-area Regional Transit Boards (RTA, CTA, Metra, and Pace).

The Executive Ethics Commission

Among its duties, the EEC establishes rules regarding investigations conducted by executive inspectors general, receives reports of activity from the executive inspectors general, makes determinations concerning the public release of investigative reports of executive inspectors general, and in instances where sufficient evidence exists, conducts hearings concerning violations of the Ethics Act.

For additional information about the EEC, visit its website at www2.illinois.gov/eec.

Among other things, the EEC's website offers brochures for download and videos to view about laws that apply to state employees. Topics covered by the brochures include the gift ban, prohibited political activities, whistle blower protection, revolving door issues, and investigations conducted by executive inspectors general.

The Executive Inspector General

Established in 2003, the OEIG is an independent state agency. Its primary function is to investigate fraud, waste, abuse, and violations of the Ethics Act and other laws, rules, and policies in governmental entities. The OEIG investigates allegations of misconduct by the employees, appointees, and elected officials under its jurisdiction. The OEIG also has responsibility for investigating alleged violations by those doing business with entities under its jurisdiction.

The Executive Inspector General

The OEIG's jurisdiction includes:

- the governor;
- the lieutenant governor;
- the board members and employees of, and vendors and others doing business with, the Regional Transit Boards (i.e., RTA, CTA, Metra, and Pace);
- the board members and employees of, and vendors and others doing business with, the state public universities; and
- all employees of and vendors and others doing business with state agencies and departments of the executive branch of state government, except for those agencies under the jurisdiction of other executive branch constitutional officers, specifically the attorney general, the secretary of state, the comptroller, and the treasurer. Other inspectors general have jurisdiction over the four executive branch constitutional officers not under the OEIG's jurisdiction, and the state legislature.

For additional information about the OEIG, visit its website at www2.inspectorgeneral.illinois.gov.

Reporting Misconduct

If you witness misconduct or have evidence of it, you should report it to the proper authorities.

Executive Order 16-04 directs state employees to report **promptly** to the OEIG or their ethics officer any information concerning alleged misconduct, including but not limited to, waste, corruption, fraud, conflicts of interest, or abuse by another state officer, employee, or vendor. The OEIG receives an average of 10-15 complaints each day.

To report a non-emergency violation of law, rule, or regulation, you should contact the OEIG via its **toll-free hotline at (866) 814-1113**. Reports of alleged violations may also be submitted via the internet at www2.inspectorgeneral.illinois.gov. For those who require it, the OEIG may also be contacted via a **telecommunications device for the deaf (TDD) at (888) 261-2734**.

You may also mail your complaint to one of the OEIG offices:

OEIG
69 West Washington, Suite 3400
Chicago, IL 60602

OEIG
607 East Adams, 14th Floor
Springfield, IL 62701

Reporting Misconduct

The identity of a complainant must be kept confidential by the OEIG unless the individual consents to disclosure of her or his identity, or disclosure of her or his identity is otherwise required by law. Alleged violations may be reported to the OEIG anonymously. However, when filing an anonymous complaint, please ensure that there is sufficient detail concerning the allegations for an investigation to be initiated.

In the event of an emergency situation, such as those involving the illegal possession or use of a weapon, you should contact the Illinois State Police or other police agency that can provide the fastest response (for example, by dialing "911").

Whistle Blower Protection

Two different statutes protect state employees against retaliation for reporting misconduct.

Under the Whistleblower Act, 740 ILCS 174/20.2, and Article 15 of the Ethics Act, it is generally unlawful for **any employer**, including the state, to retaliate **or threaten retaliation** for an employee's disclosure of information to a government or law enforcement agency if the employee has reasonable cause to believe that the information discloses a violation of a state or federal law, rule, or regulation.

Retaliatory action means the reprimand, discharge, suspension, denial of promotion, demotion, transfer, or change in the terms or conditions of the state employee's employment, taken in retaliation for a state employee's involvement in a protected activity.

Whistle Blower Protection

If an employer retaliates against an employee in violation of these laws, the employee may bring a civil action against the employer that may result in:

- reinstatement of employment and seniority rights;
- back pay with interest; and
- compensation for any damages, including litigation costs, expert witness fees, and reasonable attorney fees.

In addition, under the Ethics Act, any employee who commits retaliation in violation of the Act may be subject to disciplinary action up to and including discharge by his or her state agency, as well as potential administrative action by the EEC.

Whistle Blower Protection

Neither the Ethics Act nor Whistleblower Act, however, prevent a state employee from being disciplined for matters unrelated to the above-listed protected activity.

For example, a state employee who discloses an unlawful act of another state employee may still be disciplined for failing to complete a required work assignment. Such discipline is allowable if it is demonstrated that the discipline (in this example, for failing to complete a work assignment) would have been imposed in the absence of the employee's disclosure of the unlawful act.

Ethics Question

Raymond works for a state agency. One of his subordinate employees files a complaint with DHR. Raymond learns of the complaint, which he believes is a waste of DHR's time and should instead have been handled internally. Raymond later makes up a list of employees who should undertake training, which may qualify them for promotions. Raymond includes the names of several employees of the unit, but excludes the employee who lodged the complaint, because Raymond does not think that employees who file complaints outside the agency should get the training. Are Raymond's actions appropriate?

- A. Yes, Raymond has latitude to decide who gets the training and the employee did show poor judgement in filing the complaint with DHR.
- Please try again.
- B. Yes, the training does not guarantee a promotion and the employee can still qualify for the promotion in other ways.
- Please try again.
- C. No, Raymond may not take any action, including an omission or inaction, against the employee for filing the complaint, even if he thinks the complaint would have been better handled internally.
- **Correct! The best answer is C.**
  Raymond may not deny an opportunity to an employee in retaliation for filing a complaint.

Penalties

Penalties for violations of ethics-related laws, rules, and policies by state employees and appointees are dependent upon the specific circumstances. Penalties may include administrative action (by a state agency, for example) up to and including termination of employment or appointment.

In addition, the EEC may levy monetary fines for certain violations of the Ethics Act. Illegal acts, such as bribery, solicitation misconduct, or official misconduct, may be prosecuted criminally.

Lesson 1 Summary

In this lesson you should have learned:

- the duties of ethics officers, the OEIG, and the EEC;
- state employees must report alleged misconduct to the OEIG or their ethics officer;
- there are protections for employees who report violations of the law; and
- there are penalties for violating the Ethics Act and other state laws.

Lesson 2: General Rules for Ethical Conduct

Subjects in Lesson 2:

- Personnel Policies and Time Reporting

- Adherence to Agency Policies
- Conflicts of Interest
- Truthful Oral and Written Statements
- Rights and Responsibilities

You will be asked questions such as:

Diane works a regular schedule, with one half hour unpaid lunch period and two paid 15-minute breaks. Diane usually combines the breaks with lunch to take an hour for the mid-day meal. Diane's office manager organized a rotating schedule of voluntary employees to bring donuts to the office. When it's Diane's turn to get donuts, she is 15-20 minutes late arriving to work. Diane never shortens lunch when it's her turn to get donuts. Because the late arrival is due to getting the donuts, which is scheduled by the office manager, Diane is wondering whether she needs to report the late arrival. What is the best answer an ethics officer could give to Diane?

Look for guidance in the next few pages.

Personnel Policies and Time Reporting

Under the Ethics Act (5 ILCS 430/5-5), personnel policies must include elements relating to work time requirements, documentation of time worked, documentation for reimbursement of travel on official state business, compensation, the earning or accrual of state benefits for all state employees who may be eligible to receive those benefits, and a prohibition on sexual harassment.

State employees must comply with these personnel policies.

Please consider which of the following statements regarding state employee time reporting are correct:

- Every executive branch employee must submit timesheets.
- Each employee is responsible for the accuracy of his or her own timesheet.
- Timesheets must document the time spent each day on official business to the nearest quarter hour.

Proceed to the next page to see the best answers.

Time Reporting

All three responses are correct.

The Ethics Act mandates the implementation of policies requiring state employees to periodically submit timesheets documenting the time spent each day on official state business to the nearest quarter hour. Employees are expected to accurately document the time worked each day on their timesheets.

Ethics Question

Diane works a regular schedule, with one half hour unpaid lunch period and two paid 15-minute breaks. Diane usually combines the breaks with lunch to take an hour for the mid-day meal. Diane's office manager organized a rotating schedule of voluntary employees to bring donuts to the office. When it's Diane's turn to get donuts, she is 15-20 minutes late arriving to work. Diane never shortens lunch when it's her turn to get donuts. Because the late arrival is due to getting the donuts, which is scheduled by the office manager, Diane is wondering whether she needs to report the late arrival. What is the best answer an ethics officer could give to Diane?

- A. No, when it's Diane's turn, getting the donuts is part of her job.
- Please try again.

- B. Yes, all late arrivals should be noted on the timesheet, even if for a work activity like getting the donuts.

- Please try again.

- C. Yes, getting donuts is not part of Diane's job duties, so she needs to record her late arrival to ensure she is not compensated for this time.

- **Correct! The best answer is C.**
  Getting donuts is a voluntary activity and should be done on Diane's own time. If Diane instead arrives late to work, she needs to document this time accurately.

Laws, Rules, and Agency Policies

State employees must comply with all applicable policies, rules, regulations, and laws, including, but not limited to, those related to:

- nondiscrimination;
- workplace threats or violence;
- hiring practices;
- nepotism;
- time reporting and attendance;
- reimbursement of expenses;
- use of state property and resources;
- procurement;
- employee conduct;
- confidentiality of official records and information; and
- reporting misconduct or abuse.

Generally, public resources and property should only be used for the public good.

Laws, Rules, and Agency Policies

Consider these examples:

- If your agency has a policy stating that it will not favor businesses with personal ties to agency leadership, and you are in charge of buying refreshments for community outreach meetings, then you must ensure that you do not place orders for refreshments solely with the caterer owned by a relative of a senior manager in your agency.
- If your agency has a policy stating that supervisors may not hire their immediate family members as temporary or emergency workers, then do not hire your children for emergency or temporary positions.
- If your agency offers employees two 15-minute breaks each day, you should not take more than two 15-minute breaks each day, even if there is no sign-out / sign-in requirement.
- If your agency allows employees only minimal personal use of state computers, you should not make excessive personal use of your state computer.

If you see violations of agency policies, you must contact the OEIG or your agency's ethics officer.

Conflicts of Interest

Many state employees have personal, financial, or business interests, second jobs, or volunteer activities that have the potential to conflict with their official work on behalf of the state. When conducting state business, state employees are required to put the state's interests ahead of personal interests.

As a state employee, you should consider your agency's rules about conflicts of interests any time you have a personal interest in an official act by your agency. You should take action to avoid conflicts and the appearance of conflicts, or, if unavoidable, you should disclose and manage any conflict of interest in compliance with any applicable policies. Speak with your ethics officer for further guidance.

Conflicts of Interest

Many state agencies have policies that define conflicts of interest and specify actions that must be taken by their employees to report or remedy these conflicts. Examples of conflicts of interest that must be avoided include, but are not limited to, instances in which a state employee:

- influences a hiring decision involving a friend, family member, or associate;
- recommends providing a state grant to an entity in which the employee, or an employee's friend, family member, or associate has an interest;
- expedites issuance of a state license, regulatory decision, or vendor payment in which the employee has an interest;
- participates in a procurement decision, such as the award of a contract or issuance of contract change orders, to an entity in which the state employee has a financial interest; or
- has a second job that interferes with the state employee's work for the state.

Whenever possible, you should avoid even the appearance of a conflict of interest. Speak with your ethics officer if you have questions.

Conflicts of Interest

In certain instances, a state employee's conflict of interest may violate the law.

For example, it would be unlawful for a state employee to provide confidential information about a vendor selection process to a business associate whose company is vying for state business. The use of such insider information to benefit oneself or another person is unlawful under the Illinois Procurement Code (30 ILCS 500/50-50).

Relatedly, certain state employees and appointees (along with some of their family members and business associates) may not have or acquire financial interests in state contracts. In addition, a state employee with an offer or contract to work for a vendor at any time in the future may not negotiate with that vendor on behalf of the state. See Sections 50-13 and 50-15 of the Procurement Code for more details.

There are additional conflict-related rules regarding post-state employment opportunities, which are discussed later in this training.

Ethics Question

Derek works for a state agency that manages public benefit payments. Part of Derek's job is to process applications for benefits. Sometimes Derek assists his relatives by meeting them outside of work to collect their applications. These relatives have different last names and addresses from Derek. Should Derek process these applications?

- ○ A. Yes, all people who qualify for benefits should receive them.

- Please try again.

- B. No, if agency policy says that employees may not process applications for friends or relatives, and in any event, he should consider the appearance of a conflict of interest.

- **Correct! The best answer is B.**
  Derek should follow agency policy, and if the policy says not to process applications for relatives or friends, then he must follow that policy. If there is no policy, he should still consider that doing so may appear to be a conflict of interest and consult his ethics officer for guidance.

- C. Yes, it's his job to process applications and he should do his job.

- Please try again.

Truthful Written and Oral Statements

State employees have an inherent duty to uphold the truth. Many agencies have rules requiring employees to be honest and truthful in their communications with colleagues. Section 20-70 of the Ethics Act and Executive Order 16-04 require all state employees to cooperate with OEIG investigations. The Ethics Act sets penalties for employees who intentionally give incomplete or incorrect answers to OEIG questions. Employees who fail to cooperate with an OEIG investigation may be fined and may also face other disciplinary action.

Truthful Written and Oral Statements

"[Respondent] admitted that he falsified his Metra employment application when he indicated that he left [a previous employer] voluntarily." (OEIG Case #16-01981)

- These are words from a publicly released OEIG investigative report regarding an employee who provided false information on his employment application. The employee was discharged.

Employee Rights and Responsibilities

State employees who become involved in an investigation conducted by the OEIG have both rights and responsibilities.

As a state employee, under the Ethics Act, you have an obligation to cooperate in such investigations. You must participate in interviews as requested, tell the truth, and not withhold information. Failure to cooperate includes, but is not limited to, intentional omissions and knowing false statements, and is grounds for disciplinary action, including dismissal. Monetary fines may also be assessed by the EEC for failing to cooperate with the OEIG's investigation.

Employee Rights and Responsibilities

"Respondent violated Section 50-5(e) of the Ethics Act when he intentionally obstructed or interfered with an investigation of the EIG, pursuant to the Ethics Act, by answering falsely several questions during interviews and in written submissions to the EIG thereafter." (EEC decision #18-EEC-005)

- These are words from a publicly released EEC decision. The EEC fined the respondent $1,000 for intentionally obstructing and interfering with an OEIG investigation.

Employee Rights and Responsibilities

In the course of an investigation, investigators may request information from any person when the information is deemed necessary for the investigation. The executive inspector general may issue subpoenas to compel the attendance of witnesses and the production of documents and other items for inspection and copying.

The OEIG may compel any state employee to truthfully answer questions concerning any matter related to the investigation. If the OEIG has compelled the interview, no statement or other evidence therefrom may be used against the employee in any subsequent criminal prosecution, unless the employee consents.

Requests for production or viewing of documents or physical objects under state agency control must be made in writing by the OEIG. If the recipient of such a request believes that the release of the subject matter of the request might violate existing rights under state or federal law, the recipient has the right to seek a determination from the EEC relative to such rights or protections.

Employee Rights and Responsibilities

As a state employee, you have various additional rights during investigations, including, but not limited to, those resulting from EEC regulations (2 Ill. Admin. Code Section 1620.300) which specify:

- If investigators reasonably believe an employee who is the subject of the investigative interview will likely face discipline, the investigators must notify the employee whether the underlying investigation is criminal or administrative in nature.
- If the underlying investigation is **administrative** in nature, the interviewee shall be presented a form that outlines the interviewee's rights during the interview, including the right to the presence of a union representative or coworker **uninvolved** in the investigation.
- If the underlying investigation is **criminal** in nature, the interviewee shall be presented a form that outlines the interviewee's rights during the interview, including the right to the presence of **an attorney**, union representative or coworker uninvolved in the investigation.

Employee Rights and Responsibilities

It is the policy of the OEIG that its investigators will present the interviewee with a form outlining the interviewee's rights unless OEIG investigators reasonably believe at the time of an interview that there are no circumstances under which an interviewee will likely face discipline or adverse action.

The OEIG will not infringe on a state employee's right to seek advice from their ethics officer on the interpretation and implementation of the Ethics Act, or to seek advice from private legal counsel.

The full text of the rules governing OEIG investigations may be found at the EEC's website: www2.illinois.gov/eec.

Lesson 2 Summary

In this lesson you should have learned:

- the importance of accurately tracking hours worked to the nearest quarter hour;
- agency policies are important and should be followed at all times;
- state resources must be used in compliance with agency policies and generally only in support of official business;
- state employees should avoid situations in which their interests could be perceived to conflict with the state's;
- state employees are required to make truthful and complete written and oral statements in the course of conducting state business; and
- state employees are required to cooperate with OEIG investigations.

Lesson 3: Political Activities

Subjects in Lesson 3:

- Solicitation of Political Contributions on State Property

- Solicitation Misconduct
- Prohibited Political Activities
- Prohibited Offer or Promise
- State-Sponsored Public Service Announcements

You will be asked about situations like:

Victoria, a state employee, volunteers in her free time as a precinct coordinator for a local political candidate. Victoria gets phone calls and emails on her personal phone from people looking to work on the campaign, and she always responds to them immediately. Sometimes, these emails and phone calls come during her compensated work hours. She never uses her lunch or break times to answer these communications; rather, she answers them throughout the day. Victoria is generally brief with the volunteers, only telling them where to go and when and who to report to. Is this a violation of the Ethics Act?

Look for the answer on the next pages.

Solicitation of Political Contributions

Public officials, state employees, candidates for elective office, lobbyists, officers, employees, or agents of political organizations **are generally banned** from soliciting political contributions on state property.

Section 5-35 of the Ethics Act says, "Contributions shall not be intentionally solicited, accepted, offered, or made on State property by public officials, by State employees, by candidates for elective office …" The Act further defines "State property" as "any building or portion thereof owned or exclusively leased by the State or any State agency at the time the contribution is solicited, offered, accepted, or made." "State property" does not however, "include any portion of a building that is rented or leased from the State or any State agency by a private person or entity."

Solicitation Misconduct

The Criminal Code of 2012, 720 ILCS 5/33-3.1, prohibits public employees with regulatory authority, from ever soliciting or receiving campaign contributions from a person engaged in an activity over which the employee has regulatory authority.

If you have regulatory authority over a person, such as responsibility to investigate, inspect, license, or enforce regulatory measures related to the person's business or activity, you can never ask that person for a campaign contribution even when not on compensated time or on state property. If you knowingly ask for or receive political campaign contributions from that person, you have committed **solicitation misconduct**.

Prohibited Political Activities

The Ethics Act limits certain political activities of state employees while on state property, during state-compensated time, or when using state property or resources.

Please take the time to carefully review the following lesson. It is important that you recognize the significance that obeying these laws has with respect to the public's trust in state government. If you have questions about prohibited political activities, you may contact your ethics officer.

If you have evidence of violations of laws pertaining to the political activities of state employees or officials, you must report it to the OEIG and/or your ethics officer.

Prohibited Political Activities

Section 5-15 of the Ethics Act generally prohibits state employees from intentionally performing any prohibited political activity during compensated time (other than vacation, personal, or compensatory time off) or by misappropriating any state property or resource.

Prohibited political activities include, but are not limited to:

- distributing, preparing for distribution, or mailing campaign literature, campaign signs, or campaign materials;
- preparing for, organizing, or participating in political events or meetings;
- soliciting contributions, including but not limited to the purchase of, selling, distributing, or receiving payment for tickets for any political fundraiser, political meeting, or other political event; and
- soliciting votes on behalf of a candidate for office or political organization.

There are eleven other prohibited political activities. A full list of prohibited activities may be found in the Ethics Act definition section.

Prohibited Political Activities

Which of the following statements is correct regarding prohibited political activities?

A) A state employee may solicit votes for a candidate for elective office while on a sick day.

B) A state employee may use a state computer to prepare campaign literature as long as she does so after her workday is over.

C) A state employee may distribute political campaign literature on a vacation day.

D) A state employee may campaign against a referendum question using his state email account.

Click next to reveal the best answer

Prohibited Political Activities

Only statement C is correct: A state employee may choose to undertake political activity on a vacation day so long as the employee does not use state resources to do so.

A) State employees may not solicit votes on a sick day because, by statute, prohibited political activity cannot be performed during any compensated time (other than vacation, personal, or compensatory time off).

B) State employees may not, at any time, intentionally misappropriate any state property or resources by engaging in a prohibited political activity such as the preparation of campaign literature.

D) State employees may not intentionally misappropriate any state property or resources such as a state email account by engaging in a prohibited political activity, including campaigning for or against a referendum question.

Ethics Question

Victoria, a state employee, volunteers in her free time as a precinct coordinator for a local political candidate. Victoria gets phone calls and emails on her personal phone from people looking to work on the campaign, and she always responds to them immediately. Sometimes, these emails and phone calls come during her compensated work hours. She never uses her lunch or break times to answer these communications; rather, she answers them throughout the day. Victoria is generally brief with the volunteers, only telling them where to go and when and who to report to. Is this a violation of the Ethics Act?

- A. No, employees are allowed to do these types of activities during the compensated work day if they keep them brief.

- Please try again.

- B. Yes, state employees may not conduct political activities on compensated time.

- **Correct! The best answer is B.**
  In general, employees may only conduct political activities on unpaid time, or while on vacation, personal, or compensatory time; while on compensated work time, such activities are prohibited, even if they are brief. Certain state employees, such as employees of the OEIG, are prohibited from such political activities at all times.

- C. Yes, state employees are prohibited from participating in political campaigns at all times.

- Please try again.

Prohibited Offer or Promise

Under Section 5-30 of the Ethics Act, state employees, appointees, and officials are prohibited from offering or promising **anything of value** related to state government in consideration for a contribution to a political committee, political party, or other entity that has as one of its purposes the financial support of a candidate for elective office.

Prohibited Offer or Promise

In the context of a prohibited offer or promise related to a political contribution, **anything of value** includes, but is not limited to:

- positions in state government;
- promotions;
- salary increases;
- other employment benefits, such as modified compensation or benefit terms, compensated time off, or changed job titles;
- board or commission appointments;
- favorable treatment in any official or regulatory matter;
- the award of any public contract; and
- action or inaction on any legislative or regulatory matter.

Prohibited Offer or Promise

If your supervisor directs you to speed up a license renewal for a person because the person contributed to a candidate, whom should you notify?

A. The OEIG.

B. Your ethics officer.

C. No one; the supervisor has done nothing wrong by urging you to work more efficiently.

Continue to the next page to check your answer.

Prohibited Offer or Promise

Answers A and B are correct. In addition to Executive Order 16-04, Section 5-30(b) of the Ethics Act specifically indicates that if you are requested or directed by any state employee to take an official action based on a campaign contribution, you **must** report the request or directive to either:

- the OEIG; or

- your ethics officer.

Ethics Question

Sean's cousin is a famous baseball player. Sean asks his supervisor for additional compensated time off to attend another relative's wedding because he is out of other benefit time. Sean's supervisor says he can have an extra paid day off if he brings back a signed picture of the baseball player to auction off at a political fundraiser to support a popular congressional candidate. Should Sean accept the extra paid day off in exchange for getting the signed picture?

- A. Yes, Sean will see his cousin on vacation time, when political activity is permitted.

- Please try again.
  Because the additional time off is conditioned on getting the picture for the candidate, Sean should not agree to the arrangement.

- B. Yes, getting a signed picture is not a political activity.

- Please try again.
  Anything of value given to a campaign for use by the campaign is a political contribution, and it is against the Ethics Act to trade a contribution for time off from work.

- C. No, Sean's supervisor should not offer, and Sean may not accept, additional compensated time off in exchange for getting something of value to benefit a political fundraiser for a candidate for elective office.

- **Correct!**
  Anything of value given to a campaign for use by the campaign is a political contribution, and it is against the Ethics Act to trade a contribution for additional compensated time off from work.

Public Service Announcements

The Ethics Act prohibits any public service announcements or advertisements on behalf of any state administered program that contain the proper name, image, or voice of any executive branch constitutional officer or member of the General Assembly from being broadcast or aired on radio or television, printed in a commercial newspaper or commercial magazine, or displayed on a billboard or electronic message board at any time.

Furthermore, the proper name or image of any executive branch constitutional officer or member of the General Assembly may not appear on any bumper stickers, commercial billboards, lapel pins, buttons, magnets, stickers and other similar promotional items that are not in furtherance of the person's official state duties or governmental and public functions, if designed, paid for, prepared, or distributed using public funds. See 5 ILCS 430/5-20.

Lesson 3 Summary

In this lesson you should have learned:

- state employees must not solicit, offer, make, or accept political contributions on state property;
- state employees must not ask for or accept political contributions from anyone whom they have authority to inspect, license, investigate, or regulate;
- state employees and officials must not engage in prohibited political activities during compensated time or by misappropriating state property or resources;
- state employees must not offer anything of value related to state government in exchange for political contributions; and
- certain public service announcements and advertisements for state programs, as well as promotional items paid for using public funds, may not bear the voice, image, or name of constitutional officers.

Lesson 4: Ethics Rules for All State Employees

Subjects in Lesson 4:

- Gift Ban Regulations
- Bribery
- Official Misconduct

You will be asked situations like:

Carla works for a company that sells office supplies. Carla's company offers all customers who make large purchases the opportunity to select one prize. Prizes include expensive jewelry, vacations, and tickets to sought-after concerts, all valued over $100. Carla meets with a state employee, Bob, and offers to give Bob one of each of the prizes the company offers to its customers, if his agency makes a large purchase. May Bob take these prizes for himself if his agency makes a large purchase?

Look for guidance in the next few pages.

Gift Ban

With certain exceptions, as a state employee, pursuant to the Ethics Act, you may not ask for or accept a gift from someone who is a **prohibited source**. This prohibition against accepting gifts also applies to some of your family members. A prohibited source is someone who:

- seeks an official action from you, those who direct you, or your state agency;
- does business or seeks to do business with you, those who direct you, or your state agency;
- conducts activities that are regulated by you, your state agency, or those who direct you;
- has interests that may be substantially affected by the performance or nonperformance of your official duties; or
- is a registered lobbyist or is required to register with the secretary of state's office as a lobbyist.

Also, you may not ask for or accept a gift from an agent of, spouse of, or an immediate family member living with any of the above-mentioned **prohibited sources**.

Gift Ban

Under the Ethics Act, **gifts** include, among other things, entertainment, hospitality, loans, discounts, and any other tangible or intangible items having monetary value, such as cash, food, and drinks.

Asking for or accepting a gift may be unlawful under the Ethics Act, and/or could be prohibited by your state agency's policies. In some instances, agency policies may be more restrictive than the Ethics Act's gift ban, such as Executive Order 15-09, which is discussed further in this training.

Gift Ban

"Respondent violated the gift ban in the Ethics Act when she intentionally accepted roundtrip airfare... in the amount of $2,845.80, ... from [a prohibited source]." (EEC decision #16-EEC-005)

- These are words from an EEC decision explaining why an IDOT employee was fined $1,000 for intentionally accepting a gift from a prohibited source.

Gift Ban

The Ethics Act's gift ban has some exceptions where you may accept gifts from a prohibited source, including, for example:

- items that are provided by one state employee to another state employee;
- gifts that state employees receive from a relative or personal friend;
- items available to the general public on the same terms; and
- certain educational materials and reimbursement of travel expenses for a state employee's attendance at a meeting to discuss state business (assuming you follow additional steps required by 2 Ill. Admin. Code, Section 1620.700).

For a complete list of the exceptions to the Ethics Act's general ban on accepting gifts from prohibited sources, please refer to Section 10-15 of the Ethics Act. When in doubt, ask your ethics officer.

In general, it is recommended that you simply decline anything of value offered to you (other than compensation or reimbursement you may receive from your state agency) in relation to your official duties.

Gift Ban

Executive Order 15-09 established more restrictive policies to the gift ban. For instance:

- it requires employees to obtain prior approval from the Executive Director of the EEC for travel expenses for a business meeting to be able to be paid by a prohibited source;
- it allows only *de minimis* (i.e., minimal) meals or refreshments served at business meetings or receptions to be paid for by prohibited sources; and
- it indicates that the exception for receiving gifts from any one prohibited source during a calendar year with a cumulative value of less than $100 is not available for state employees.

Gift Ban

Please consider which of the following is correct?

If you receive a prohibited gift, you do not violate the law if you promptly take reasonable action to:

- return the gift to its source;
- give the gift to a non-profit organization organized under Section 501(c)(3) of the Internal Revenue Code; or
- give an amount equal to the gift's value to an appropriate non-profit organization if you are unable to return the gift for any reason (for example, the gift was a meal, event, or other intangible gift).

Click next to reveal the best answer.

Gift Ban

All of these answers are correct.

If you receive a prohibited gift, you do not violate the law if you **promptly** take reasonable action to:

- return the gift to its source;
- give it to a non-profit organization; or
- give an amount equal to its value to a non-profit organization.

Ethics Question

Carla works for a company that sells office supplies. Carla's company offers all customers who make large purchases the opportunity to select one prize. Prizes include expensive jewelry, vacations, and tickets to sought-after concerts, all valued over $100. Carla meets with a state employee, Bob, and offers to give Bob one of each of the prizes the company offers to its customers, if his agency makes a large purchase. May Bob take these prizes for himself if his agency makes a large purchase?

- A. Yes, because the prizes are offered to all customers, not just employees of state agencies.
- Please try again.
- B. Yes, because the prizes are included in the company's offer of goods and services.
- Please try again.
- C. No, because the company becomes a prohibited source when it becomes a vendor for Bob's agency. Consequently, Bob may not accept these prizes from the prohibited source.
- **Correct! The best answer is C.**
  Employees may not accept large gifts from prohibited sources unless they were to meet one of the exceptions to the Ethics Act. None of those exceptions apply under these circumstances.

Bribery

Bribery occurs when you ask for or accept any property or personal advantage in exchange for taking or not taking (or influencing someone else to take or not take) an official act.

It is unlawful for you to accept something of value, such as cash, pre-paid gift cards, loans, or travel expenses, in exchange for taking an official action, such as authorizing state financial aid, selecting an individual for a state job, renewing a state contract, expediting the issuance of a professional license, or compiling state records.

If you solicit or accept anything in exchange for an official act, you could face criminal bribery charges. See 720 ILCS 5/33-1.

In addition, any state official or employee who is offered a bribe, even if they decline to accept the bribe, **must report the attempt** to the Illinois State Police. Failure to report a bribe or an offer of a bribe is a Class A misdemeanor.

Bribery and Gift Ban

Exceptions to the gift ban do not apply to bribery violations. State employees may not solicit or accept any gifts, including gifts valued at under $1, in exchange for performing official acts.

Also, as a reminder, state employees must make certain their solicitation or acceptance of any gift is permitted under their state agencies' policies and other applicable laws or policies, **which may be more restrictive than the Ethics Act**.

Official Misconduct

As a state employee or official you commit **official misconduct** when, in your official capacity, you:

- intentionally or recklessly fail to perform any mandatory duty as required by law;
- knowingly perform an act which you know you are forbidden by law to perform;
- perform an act in excess of your lawful authority with intent to obtain personal advantage for yourself or another; or

- solicit or knowingly accept for the performance of any act a fee or reward which you know is not authorized by law.

If you are convicted of official misconduct, you may forfeit your office or employment. In addition, official misconduct is a Class 3 felony. See 720 ILCS 5/33-3.

Lesson 4 Summary

In this lesson you should have learned:

- you should not accept anything of value, other than your state compensation, in exchange for performing your state duties;
- exceptions to the gift ban do not excuse bribes; and
- failing to perform state duties, or performing actions outside of the scope of your duties, can be a criminal offense.

Lesson 5: Rules for Certain Circumstances

Subjects in Lesson 5:

- Hiring & Employment Practices
- Revolving Door
- Statements of Economic Interests
- Procurement Communications
- Ex Parte Communications

You will be asked about situations like:

Philip, an agency director, is considering leaving his state agency and gets a job offer from a company that has a long-standing contract for services with the agency. The contract has been in place since before Philip came to the agency, and the agency makes six-figure annual payments on the contract. May Philip now accept the offer?

Look for guidance in the next few pages.

Hiring & Employment Practices

(*Shakman, et al., v. Democratic Organization of Cook County, et al.,* Case No. 69 C 2145 (Judgment, 1972); *Rutan v. Republican Party of Illinois,* 497 U.S. 62 (1990); Administrative Order No. 1 (1990); No. 2 (1990); No. 1 (1991); and No. 2 (2009))

Most positions in state government must be filled on an objective, merit basis, without regard to an applicant's political affiliation or support. The overwhelming majority of state employees should be hired and promoted for their skills and abilities and not for who they know or what political connections they have. These positions are commonly referred to as "covered," "job-protected," "Personnel Code-protected," "code-protected," or "*Rutan*-covered" positions. Here, we will refer to these positions as **job-protected**. An employee in a job-protected position can only be fired for cause. All job-protected positions must be posted and filled using a competitive selection process.

Job-protected positions in state government are subject to hiring procedure implemented to comply with a 1990 U.S. Supreme Court decision, *Rutan v. Republican Party of Illinois*, 497 U.S. 62 (1990), commonly referred to as "*Rutan*," and other state and federal case law.

Hiring & Employment Practices

Procedures for making hiring decisions for job-protected positions have been established by the governor and apply to all agencies, boards, and commissions under the governor's jurisdiction. These procedures state that for most hiring decisions:

- grading of applications must be free from all political considerations;
- the creation of lists of eligible candidates for a job-protected position must be done on a blind basis, i.e., without knowledge of the candidates' identity;
- job descriptions for job-protected positions must be reviewed and, if necessary, updated prior to posting, to reflect current duties, responsibilities, and requirements;
- interviewers must make their assessments of candidates based on pre-determined hiring criteria and with uniform questions related to the position's duties;
- employment decisions must be properly documented, including a written justification for the agency's employment decision; and
- the agency director or his or her designee must certify that the employment decision was not based on political party affiliation or support (or lack thereof).

Hiring & Employment Practices

Only a limited number of state jobs are exempt from these hiring requirements; these positions may commonly be referred to as "*Rutan*-exempt," "Personnel Code-exempt," "exempt," or "at-will" positions. Here, we will refer to these positions as at-will.

At-will positions are exempt from collective bargaining, the *Rutan* case, and Personnel Code protection. Employees can be hired into these positions absent a competitive interview process and discharged from these positions without cause.

Hiring & Employment Practices

"[Employee] participated in the interview of someone that she has known for her whole life and with whom she regularly socializes and goes on family vacations. Moreover, [the applicant] had donated money to and engaged in campaign activity in support of her husband's campaign for [elective office]. Preventing the hiring of individuals for *Rutan* covered positions based on their support of political candidates is exactly what the *Rutan* process was designed to prevent." (OEIG Case #15-01145)

- These are words from a publicly disclosed OEIG investigative report explaining how an IDOT employee's personal interest conflicted with her public duty when she improperly participated in an interview and scored an applicant with whom she had a close personal friendship.

Hiring & Employment Practices

Oversight: OEIG Hiring & Employment Monitoring

The Ethics Act directs the OEIG to review hiring and employment so as to ensure compliance with *Rutan* and applicable employment laws. As part of its regular investigations, the OEIG reviews misconduct related to hiring and agency hiring practices. In addition, the OEIG has created the Hiring & Employment Monitoring (HEM) Division, which operates independently from its investigation unit, to conduct compliance-based reviews of hiring decisions and recommend changes regarding personnel practices. This may include monitoring all aspects of certain hiring sequences to ensure compliance with hiring procedures for job-protected positions.

Hiring & Employment Practices Examples

Q. My brother has applied for a job-protected position and I know he's well qualified. Is it okay for me to put in a good word regarding my brother with the agency staff that are deciding who to interview for this job-protected position?

A. No, decisions about who to interview should be done solely on the basis of application materials and without knowledge of the applicant's identity. Recommendations like the one described are to have no weight in the hiring process for job-protected positions.

Q. How do I know if a position is job-protected or at-will?

A. The vast majority of state positions are job-protected. Personnel at your agency can help you determine whether a particular position is job-protected or at-will.

Q. What should I do if someone directs me to place someone in a job-protected position on the basis of the job applicant's political affiliation?

A. Report the matter to your ethics officer or the OEIG. Reports can be made anonymously.

Hiring & Employment Practices Examples

Q. What should I do if an employee I am evaluating does not perform some of the duties listed on his or her job description?

A. Document in the evaluation which duties the employee excels at and the duties the employee does not perform. If the job description is not accurate, it may need to be clarified. You should report the apparent or actual discrepancies to your supervisor, ethics officer, or agency personnel staff.

Q. What should I do if I am not performing the duties in my position description?

A. Report the matter to your supervisor, your agency ethics officer, or the OEIG.

Revolving Door

Revolving door employment restrictions apply to any state employees (and to their spouses or immediate family members living with them) if, during the year immediately preceding termination of state employment, the state employees:

- participated personally and substantially in the award of state contracts or contract change orders with a cumulative value of $25,000 or more to their non-state prospective employer, or its parent or subsidiary; or
- participated personally and substantially in making a regulatory or licensing decision that directly applied to the prospective employer, or its parent or subsidiary.

If a state employee has participated personally and substantially in any of the foregoing transactions, then he or she (and any spouse or immediate family members living with the employee) is prohibited from accepting the prospective non-state employment for a period of one year immediately following the date of termination from state employment. See 5 ILCS 430/5-45(a) and (b).

Revolving Door

State employees in positions that, by the nature of their duties, may have the authority to participate personally and substantially in the award of state contracts or in regulatory or licensing decisions, have a duty to notify the OEIG prior to accepting an offer of non-state employment. Such employees are referred to as being on the "c-list" (because they are identified pursuant to subsection (c) of Section 5-45 of the Ethics Act). Employees on agency "c-lists" should be instructed in writing that they are on the c-list by their respective state agencies.

"C-list" employees who, during state employment and for one year after leaving state employment, want to accept an offer of compensation or employment from a non-state employer must notify the OEIG and seek a determination from the OEIG before accepting the offer.

Revolving Door

To notify the OEIG about a prospective job offer, employees should go to the OEIG's website and follow the revolving door instructions, which include having both the employee and his/her ethics officer complete certain forms. These forms can be found here: OEIG Revolving Door Instructions & Forms.

Within 10 calendar days of receiving the forms from the employee and the ethics officer, the OEIG will determine if the employee is restricted from accepting the offer of employment and will notify that employee of the determination. The OEIG's determination regarding non-state employment will be based on whether, during the year preceding termination of state employment, the state employee participated personally and substantially in any relevant contract awards or regulatory or licensing decisions directly applying to the prospective employer, or its parent or subsidiary. The OEIG will also examine the effect the prospective employment may have had on any such awards or decisions.

The OEIG's determination may be appealed to the EEC by either the affected employee or the Office of the Attorney General no later than 10 calendar days after the date of the determination. The EEC must issue its decision within 10 calendar days. Therefore, the OEIG's determination is not final until the time to appeal has expired or the EEC has made its decision on an appeal.

Revolving Door

In addition, certain state employees who hold high-ranking positions are strictly prohibited from knowingly accepting employment or receiving compensation or fees for services from certain individuals or entities during a period of one year after the termination of their state positions - regardless of whether the state employees were involved in regulatory, licensing, or contract decisions. See 5 ILCS 430/5-45(h).

These broader restrictions apply to:

- persons whose appointment to office are subject to the advice and consent of the Senate;
- the head of a department, commission, board, or other administrative unit within the government of the state;
- chief procurement officers, state purchasing officers, and their designees whose duties are directly related to state procurement;
- chiefs of staff, deputy chiefs of staff, associate chiefs of staff, assistant chiefs of staff, and deputy governors;
- members of a commission or board created by the Illinois Constitution; and
- members of the General Assembly or executive or legislative branch constitutional officers.

Revolving Door

Persons in these high-ranking positions are referred to as being on the "h-list" (because they are governed by subsection (h) of Section 5-45 of the Ethics Act), and may not accept employment, compensation, or fees during a one year period after the termination of their state employment from a prospective employer, if the prospective employer, or its parent or subsidiary, during the year immediately preceding termination of state employment, was:

- a party to a state contract or contracts with a cumulative value of $25,000 or more involving the state employee's agency; or
- subject to a regulatory or licensing decision involving the state employee's agency.

There is no determination process through the OEIG for people on the h-list. If h-list employees have questions about prospective job offers, they may contact their ethics officer for guidance.

If you are not on either the c-list or h-list, you may also seek a determination from the OEIG about the prospective employment offer.

Revolving Door

The penalties for violating the revolving door provisions of the Ethics Act may be substantial.

The EEC has the authority to issue a fine to a state employee who accepts compensation or employment in violation of these provisions, in an amount of up to three times the annual compensation that would have been obtained in violation of the Ethics Act's revolving door employment prohibitions.

In addition, c-list employees who fail to notify the OEIG of a prospective job offer and seek a determination may face a fine of up to $5,000.

Revolving Door

Additional Revolving Door Provisions in the Procurement Code

In addition to the provisions of the Ethics Act, certain state employees whose principal duties for at least six months are directly related to state procurement are expressly prohibited from engaging in any procurement activity on behalf of a post-state employer relating to the state agency most recently employing them. This prohibition extends for two years after leaving the state agency. Relatedly, a state employee with an offer or contract to work for a vendor at any time in the future may not negotiate with that vendor on behalf of the state. See Sections 50-15 and 50-30 of the Procurement Code for more details.

Additional Revolving Door Restrictions Instituted by Executive Order

Under the terms of Executive Order 15-09, state employees under the governor's jurisdiction are prohibited from: (1) negotiating post-state employment with an entity that lobbies their agency while the employee is working for the state, and (2) accepting employment for lobbying executive branch agencies for one year after leaving their state position. These restrictions apply to all state employees under the governor's jurisdiction regardless of whether they are involved in licensing or regulatory decisions or the award of state contracts.

Ethics Question

Philip, an agency director on the h-list, is considering leaving his state agency and gets a job offer from a company that has a long-standing contract for services with the agency. The contract has been in place since before Philip came to the agency, and the agency makes six-figure annual payments on the contract. May Philip now accept the offer?

- A. No, the agency head may not accept a job offer with the company even if the contract pre-dates the arrival of the agency director.
- **Correct!**
  Because the company had an active contract over $25,000 involving Philip's agency when he was considering leaving state employment, he is strictly prohibited from accepting the job offer regardless of when it was awarded. This prohibition continues for one year after he leaves state employment.
- B. Yes, if the contract pre-dates Philip's arrival at the agency, then the revolving door provision does not apply.
- Please try again.
  If the contract was in effect during Philip's tenure, then the revolving door provisions do apply.
- C. Yes, the revolving door provision applies only to employees who participated personally and substantially in the award of a contact, and the agency head did not participate personally and substantially in the award of this contract.

- Please try again.
  Agency heads are prohibited from accepting positions with large contractors even if they did not participate personally and substantially in the award of the contract.

Statements of Economic Interests

Some state employees are required by statute, due to their job duties, to file annual Statements of Economic Interests with the secretary of state's office.

Statements of Economic Interests are intended to disclose certain financial interests that state employees may have, such as but not limited to:

- an ownership interest in excess of $5,000 fair market value in an entity (such as a company) doing business in the state; and
- the identity of any capital asset from which a capital gain of $5,000 or more was realized.

Statements of Economic Interests

If you are required to submit a Statement of Economic Interests, you should be notified annually of this requirement by the secretary of state no later than April 1. Your ethics officer should review your completed Statement before it is submitted to the secretary of state. The Statement must be filed with the secretary of state before May 1.

State employees who are required to file the Statement are also required, by Executive Order 15-09, to answer three supplemental questions relating to property owned by the employee and rented to the state, non-governmental positions held, and litigation with the state. The supplemental form should be filed electronically with the EEC.

If you have questions about the Statement of Economic Interests or the supplemental form, you may seek the advice of your ethics officer.

Memorializing Communications

Several statutes, including the Illinois Procurement Code, and the Ethics Act, require state employees under certain circumstances to create records of communications they may receive. Generally, these laws aim to ensure transparency and fairness in regulatory, quasi-judicial, procurement, and other matters, by ensuring that all interested parties are aware of relevant communications between the agency and other interested parties.

Memorializing Communications

Procurement Communications (IL Procurement Code, 30 ILCS 500/50-39, 50-40, and 50-45; 2 Ill. Admin. Code, Sections 1620.825, 1620.826, and 3002)

The State of Illinois spends literally billions of dollars each year through the procurement process. In order to ensure that the state gets the best value for its money, laws require state employees to take certain steps to protect the integrity of the procurement process. These laws require state employees who may have authority to participate personally and substantially in the decision to award a state contract to memorialize certain communications.

Any state employees who may have authority to participate in contract award decisions, who receive certain communications about an active procurement matter, including contract awards, change orders, and contract renewals or extensions, must ensure that the communication is included in the official record of the award decision or documented in any other way prescribed by the relevant laws.

Memorializing Communications

Communications must be recorded and reported to the procurement policy board if the communication imparts or requests material information (such as information about price, quantity, terms of payment, or performance) or makes a material argument; if it is in regards to a potential action; if it is related to an active procurement; AND if it is not otherwise excluded.

The employee should memorialize any communication, whether by phone call, email, letter, in-person conversation, or otherwise. The report of the communication must include, among other things, the name of the party that made the communication, the date, time, and duration of the communication, the method of communicating, and a summary of the substantive content of the communication. See 30 ILCS 50/39(b) for further details of what is needed in a report.

Memorializing Communications

In some instances, for example if a communication is made by a lobbyist, state employees should attempt to obtain documentation from the person who initiated the communication to memorialize the communication. But even after receiving that documentation, state employees are still required to create their own written reports. These reports should be filed with the procurement policy board. See 2 Ill. Admin. Code, Section 3002.1400(b).

If any of the communications described in this page and the preceding pages are made in the course of a formal public hearing; are privileged, protected, or confidential by law; or are about general procedural steps, like the format or number of copies to be submitted, then the employee does not need to record or report the communication. The Illinois Procurement Code lists additional exceptions to these reporting requirements.

Memorializing Communications

Any state employee, whether he or she has authority to participate in procurement or not, who suspects collusion or other anticompetitive practice among any bidders, offerors, contractors or state employees, must report those suspicions to the OEIG, Office of Attorney General, and Chief Procurement Officer. See 30 ILCS 50/40.

Certain state employees who willfully use details of procurement matters to compromise the fairness or integrity of the procurement process may be subject to dismissal, regardless of the Personnel Code or any collective bargaining agreement, and may also be subject to criminal prosecution. See 30 ILCS 50/45.

Memorializing Communications

Ex Parte Communications in Rulemaking (Administrative Procedure Act, 5 ILCS 100/5-165)

Just as state law requires employees at all agencies who are involved in procurement to memorialize certain communications, state law also requires employees at all agencies who are involved in rulemaking to memorialize certain conversations. Under the Illinois Administrative Procedure Act, an ex parte communication is defined as any written or oral communication by any person, during the rulemaking period, that provides or requests information of a material nature or makes a material argument regarding potential action concerning a state agency's general, emergency, or peremptory rulemaking that is communicated to the head of the agency or an employee of the agency and is:

- not made in a public forum;
- not a statement limited to matters of procedure and practice; and
- not a statement made by a state employee to fellow employees of the same board or agency.

Memorializing Communications

An ex parte communication that is received by any agency, its head, or its employee must be immediately reported to the agency's ethics officer. The ethics officer must require that the communication be made a part of the record for the rulemaking proceeding and must promptly file the communication with the EEC. These requirements under the Illinois Administrative Procedure Act apply to all state agencies.

If you have any questions concerning whether or not a communication is subject to these ex parte rules, you may seek the advice of your state agency's ethics officer.

Memorializing Communications

Ex Parte Communications in Regulatory, Quasi-Adjudicatory, Investment, and Licensing Matters (Ethics Act, Section 5-50)

In addition to the Illinois Administrative Procedure Act, the Ethics Act sets forth ex parte communication rules that apply only to certain agencies that have particular roles in regulatory, quasi-adjudicatory, investment, and licensing matters.

The list of state agencies covered by ex parte communications rules for regulatory, quasi-adjudicatory, investment, and licensing matters can be found here: 5 ILCS 430/5-50(e)

For any of these agencies, an ex parte communication from an interested party must be promptly memorialized and made part of the official record if the communication imparts or requests information of a material nature or makes a material argument concerning matters pending or under consideration by these entities. An ex parte communication from anyone else shall be immediately reported to the ethics officer.

As with the recent discussion of procurement communications, ex parte communications do not need to be specially reported when made at a formal hearing. If you have questions about communications reporting, contact your ethics officer.

Ethics Question

Jennifer works for a state agency and routinely uses a particular piece of equipment. Jennifer's agency is considering buying different equipment to accomplish the task and Jennifer has been assigned to an evaluation team to determine what other equipment can accomplish the task. After receiving bids from multiple possible vendors, Jennifer receives an email from an additional bidder with more information about new products the bidder could provide, including information on prices and discounts that the company is specially offering to provide the state if it won the contract. What should Jennifer do with this email?

- A. Respond to it. Jennifer has a big decision ahead and should learn all that she can about the equipment.
- Please try again.
- B. Report the email to the head of the evaluation team.
- Please try again.
- C. Report the email to the procurement policy board, so that it can be incorporated into the public record.
- **Correct! The best answer would be C.**
  If the email imparts material information about the bidder, then it should be memorialized and made part of the official record.

Lesson 5 Summary

In this lesson you should have learned:

- most state employees may seek a determination from the OEIG about revolving door concerns and some employees must seek a determination;
- certain employees may be required to file an annual Statement of Economic Interests;

- certain employees may be required to file reports with the procurement policy board concerning ex parte (non-public) communications that they may have with others about purchasing matters; and
- certain employees may be required to disclose and report to their ethics officer ex parte communications about rulemaking, or regulatory, quasi-adjudicatory, investment, or licensing matters they receive.

Survey

Would you answer a short survey?

The survey does not affect your certification and is optional for you to proceed and certify your completion of the training.

After you complete the survey, it will return you to this slide. Be sure go to the next slide to complete your certification. You must complete the certification on the next slide to receive credit for taking this training!

Take Survey

Certification

Acknowledgement of Participation in 2019 Ethics Training Program for State Employees:

"I certify that I have carefully read and reviewed the content of, and completed, the 2019 Ethics Training Program for State Employees. Furthermore, I certify that I understand that my failure to comply with the laws, rules, policies and procedures referred to within this training course may result in disciplinary action up to and including termination of State employment/appointment, administrative fines, and possible criminal prosecution, depending on the nature of the violation."

I certify the above

Exhibit 4

2020 Ethics Training Program for State Employees and Appointees

Office of Executive Inspector General
for the Agencies of the Illinois Governor

Introduction and Instructions

The State Officials and Employees Ethics Act (Ethics Act), 5 ILCS 430, requires state employees and appointees to complete, at least annually and within 30 days of the commencement of employment or appointment, an ethics training program conducted by their state agency. *See* 5 ILCS 430/5-10. This training program is intended to ensure you meet your obligation to comply with those requirements.

This training course has been developed in accordance with the requirements of the Ethics Act by the Office of Executive Inspector General for the Agencies of the Illinois Governor (OEIG), in consultation with the Illinois Executive Ethics Commission (EEC) and the Office of the Attorney General.

You must carefully read and review all of the information contained in this training. This training course should take approximately 60 minutes to complete.

If you have questions about the administration of ethics training, please contact your ethics officer, whose name and contact information can be found here.

Introduction and Instructions

In order to fulfill your duty to complete ethics training, the law requires you to certify your completion of this training course. To certify that you have completed the training, you must select "yes" in response to the following statement, located at the end of the training course:

"I certify that I have carefully read and reviewed the content of, and completed, the 2020 Ethics Training Program for State Employees and Appointees. Furthermore, I certify that I understand that my failure to comply with the laws, rules, policies, and procedures referred to within this training course may result in disciplinary action up to and including termination of State employment/appointment, administrative fines, and possible criminal prosecution, depending on the nature of the violation."

This certificate of completion is generated automatically at the end of the training course. You may print the certificate, save an electronic copy, or decline to do either, at your discretion.

Introduction and Instructions

For the purposes of this training, the following terms have the meanings assigned to them below:

- "State agency" means any officer, department, agency, board, commission, or authority of the executive branch of the State of Illinois, including public universities.
- "State employee" means any employee, officer, or board member of any state agency, including compensated and uncompensated appointees to state boards, or Regional Transit Boards.

Lesson 1: Administration of Ethics

Subjects in Lesson 1:

- Duties of Ethics Officers
- Duties of the EEC
- Duties of the OEIG

You will also be asked hypothetical questions to help you understand how the Ethics Act works in practice.

Ethics Officers

Every state agency, including departments, boards, task forces, and commissions, is required to designate an ethics officer. According to the Ethics Act, ethics officers:

1. act as liaisons between the agency and the OEIG and EEC;
2. review employees' Statements of Economic Interests; and
3. interpret and provide guidance on the implementation of the Ethics Act, based on case law and EEC decisions.

In addition, Executive Order 16-04 requires ethics officers to **promptly** notify the OEIG of any allegations of misconduct after receiving such information.

In certain agencies, ethics officers also play a role in handling ex parte communications, which will be discussed later in this training.

A list of ethics officers may be found at https://www2.illinois.gov/oeig/Pages/default.aspx.

The Executive Ethics Commission

The EEC, along with the executive inspectors general (EIG) and the Attorney General, is responsible for overseeing compliance with, implementing, and enforcing the Ethics Act. The EEC has nine commissioners, and it exercises jurisdiction over all officers, appointees, and employees of state agencies under the six executive branch constitutional officers, as well as the nine state public universities and four Chicago-area Regional Transit Boards (RTA, CTA, Metra, and Pace).

The EEC establishes rules governing EIG investigations, receives reports of EIG activity and reports of ex parte communications from ethics officers, decides whether to publicly release EIG investigative reports, and conducts hearings on alleged violations of the Ethics Act.

For additional information about the EEC, visit its website at https://www2.illinois.gov/eec.

Office of Executive Inspector General

The OEIG is an independent state agency. Its primary function is to investigate fraud, waste, abuse, and violations of the Ethics Act and other laws, rules, and policies of governmental entities. The OEIG investigates allegations of misconduct by employees, appointees, and elected officials, and those doing business with entities under its jurisdiction, including traditional state agencies and boards, as well as state universities and the Regional Transit Boards.

For additional information about the OEIG or its investigative process and procedures, visit its website at http://www.inspectorgeneral.illinois.gov.

For information about other inspectors general, please visit the following page: Other Illinois Inspectors General.

Lesson 1 Summary

In this lesson you should have learned:

- the duties of ethics officers;
- where to find the name and contact information for your agency's ethics officer;
- the duties of the EEC; and
- the duties of the OEIG.

Lesson 2: General Rules for Ethical Conduct

Subjects in Lesson 2:

- Time Reporting
- Conflicts of Interest

Time Reporting

Under the Ethics Act:

- Every executive branch employee must submit time reports.
- Employees are responsible for the accuracy of their own time reports.
- Time reports must document the time spent each day on official business to the nearest quarter hour.

Ethics Question

Patty works for a state agency. Patty recently learned that a relative is receiving rehabilitative services and needs a ride home after mid-day treatment. During Patty's lunch break, she picks up and takes the relative home, returning to the state office before the end of her lunch break. Patty accurately lists the lunch break on the agency time report.

Has Patty violated the Ethics Act by running a personal errand on a lunch break?

- A. Yes, lunch breaks are for consuming food. The Ethics Act requires state employees to use benefit time to run personal errands during their work day.
    - This is not the best answer
- B. No, Patty ran a personal errand within her lunch break and correctly documented the lunch break on the agency time report.
    - **Correct!** State employees must submit time reports documenting the time spent each day on official state business to the nearest quarter hour. Employees may run personal errands during their lunch breaks. Patty did not violate the Ethics Act by assisting her relative during her lunch break since she accurately reported this on her time report.
- C. Yes, Patty needs permission from her supervisor to run personal errands during her lunch break.
    - This is not the best answer

Conflicts of Interest

A **conflict of interest** occurs when the interests of a state employee or appointee conflict with the interests of the state. This might occur, for example, when a decision or recommendation that an employee makes for work either affects or is affected by personal interests or those of a family member, friend, or associate.

In some instances, state law or board rules restrict employees and appointees' outside employment or

compensation opportunities in order to prevent conflicts of interest. For example, members of the Prisoner Review Board may not engage in any other business, employment, or vocation, including holding any other salaried public office. (730 ILCS 5/3-3-1(b)).

State employees and appointees should review the conflict of interest laws and rules that apply to their agencies, boards, or commissions and try to avoid such conflicts and the appearance of conflicts. If a conflict is unavoidable, an employee or appointee should disclose the conflict and follow any applicable policies in dealing with it.

Conflicts of Interest

Many state agencies have policies that define conflicts of interest and specify actions that must be taken by their employees to report or remedy these conflicts. Examples of actions that must be avoided include:

- influencing a hiring decision involving a friend, family member, or associate;
- recommending giving a state grant or contract to an entity in which the employee, or an employee's friend, family member, or associate has an interest;
- voting to renew the license of a business owned by the appointee's friend, family member, or associate;
- expediting the issuance of a state license, regulatory decision, or vendor payment in which the employee has an interest; or
- having a second job that interferes with the state employee's work for the state.

Whenever possible, you should avoid even the appearance of a conflict of interest. Speak with your ethics officer if you have questions.

Conflicts of Interest

In certain instances, a state employee's conflict of interest may also violate the law.

For example, it would be illegal for a state employee to provide confidential information about a vendor selection process to a business associate whose company is vying for state business. The use of such insider information to benefit oneself or another person is unlawful under the Illinois Procurement Code (30 ILCS 500/50-50).

Relatedly, certain state employees and appointees (along with some of their family members and business associates) may not have or acquire financial interests in state contracts. *See* Section 50-13 of the Illinois Procurement Code for more details.

Moreover, individuals cannot generally hold positions on state boards or commissions if they (or some of their family members) have certain types of financial interests in state contracts or are registered lobbyists. *See* the Ethics Act, Section 5-55; Illinois Governmental Ethics Act, 5 ILCS 420/3A-35; and Lobbyist Registration Act, 25 ILCS 170/3.1.

Ethics Question

John is an appointee on the State Board of Education. John's spouse owns a wood manufacturing company that submitted a bid on a pencil supply contract for the public schools in the state. John's board will begin the vendor selection process for the contract next week. John believes he does not have to recuse himself from the selection process because his spouse owns the company, not him, and he does not have any role in running the company.

Is John correct?

- A. No, John should recuse himself from the vendor selection process.
    - **Correct!** John should notify his board of his relationship interest in the company and should follow his board's conflict of interest policies in dealing with the matter. State board appointees are generally advised to recuse themselves from official acts that may present a conflict of interest.

- B. Yes, there is no conflict if John is not the one who owns the pencil company.
  - This is not the best answer
- C. Yes, John does not have to recuse himself as long as he does not let his spouse's ownership in the company influence his decision in the vendor selection process.
  - This is not the best answer

Lesson 2 Summary

In this lesson you should have learned:

- the importance of accurately tracking hours worked to the nearest quarter hour; and
- state employees should avoid situations in which their interests conflict or could be perceived to conflict with the state's.

Lesson 3: Prohibited Political Activities

Subjects in Lesson 3:

- Prohibited Political Activities
- Political Campaign Contributions
- Prohibited Offer or Promise
- Public Service Announcements

Prohibited Political Activities

The Ethics Act limits certain political activities of state employees and appointees while on state property, during state-compensated time, or when using state property or resources.

In addition, other agency and board policies and laws place tighter restrictions on the political activities of certain state employees and appointees, including those activities that take place outside of work time.

If you have questions about prohibited political activities, you may contact your ethics officer. If you are aware of violations of laws pertaining to the political activities of state employees or officials, you must report it to the OEIG and/or your ethics officer.

Prohibited Political Activities

Section 5-15 of the Ethics Act generally prohibits state employees from intentionally performing any prohibited political activity during paid **time** (other than vacation, personal, or compensatory time off) or by using any state **property or resource**.

Prohibited political activities include, but are not limited to:

- distributing, preparing for distribution, or mailing campaign literature, campaign signs, or campaign materials;
- preparing for, organizing, or participating in political events or meetings;
- managing or working on a campaign for elective office or for or against any referendum question; and
- soliciting contributions or votes on behalf of a candidate for office or political organization.

There are eleven other prohibited political activities in the Ethics Act. A full list of prohibited activities can be found in the Ethics Act definition section.

Prohibited Political Activities

Which of the following statements is correct regarding prohibited political activities?

A) A state employee may seek votes for a political candidate while on a sick day.

B) A state employee may use a state computer to prepare campaign literature if the workday is over.

C) A state employee may hand out political campaign literature on a vacation day.

D) A state employee may campaign against a referendum question using a state email account.

Click next to reveal the best answer

Prohibited Political Activities

Only statement C is correct: A state employee may perform a political activity on a vacation day as long as the employee does not use state resources to do so.

The other statements are wrong for the following reasons:

A) State employees may not solicit votes on a sick day because, by statute, prohibited political activity cannot be performed during any paid time other than vacation, personal, or compensatory time off.

B) State employees may not, at any time, intentionally use any state property or resources to engage in a prohibited political activity such as preparing campaign literature.

D) State employees may not intentionally use any state property or resources, such as a state email account, to engage in a prohibited political activity, including campaigning for or against a referendum question.

Ethics Question

After a work day ends, before leaving to go home, Taylor uses a state computer to quickly update an invitation to a political campaign rally and post it on a personal social media account. The update takes less than five minutes to complete, and Taylor deletes the file from the state computer afterwards.

Are Taylor's actions appropriate?

- A. Yes, the Ethics Act does not restrict state employees from performing political activities using state resources during uncompensated time.
  - This is not the best answer
- B. No, state employees may not use state resources to engage in prohibited political activities at any time.
  - **Correct!** The Ethics Act prohibits state employees from intentionally using any state property or resources to engage in any prohibited political activity for the benefit of any campaign for elective office or any political organization. Prohibited political activity includes distributing, preparing for distribution, or mailing campaign literature, campaign signs, or other campaign material on behalf of any candidate for elective office. Here, using a state computer to work on campaign materials would be prohibited political activity.
- C. Yes, limited use of state resources, such as Taylor's quick update to the political flyer and posting it on social media does not violate the Ethics Act.
  - This is not the best answer

Political Campaign Contributions

Besides the general provisions on prohibited political activity, there are additional laws limiting where, to whom, and why state employees and appointees can make or receive campaign contributions, such as:

- Section 5-35 of the Ethics Act prohibits state employees and appointees, as well as candidates for elective office, from intentionally soliciting, accepting, offering, or making contributions **on state property**.
- The Criminal Code of 2012, 720 ILCS 5/33-3.1, prohibits state employees and appointees **from soliciting or receiving campaign contributions from anyone over whom they have authority to inspect, license, investigate, or regulate**, even when not on compensated time or on state property. This is *Solicitation Misconduct*.
- Section 5-30 of the Ethics Act prohibits state employees and appointees from offering or promising anything of value related to state government in exchange for a contribution to a political committee, political party, or other entity that has as one of its purposes the financial support of a candidate for elective office. This is called a *Prohibited Offer or Promise*.

Prohibited Offer or Promise

In the context of a prohibited offer or promise related to a political contribution, **anything of value** includes, but is not limited to:

- positions in state government or on a board or commission;
- promotions and salary increases;
- other employment benefits;
- favorable treatment in any official or regulatory matter;
- the award of any public contract; or
- action or inaction on any legislative or regulatory matter.

Per the Ethics Act, employees who are requested or directed to engage in activity that may constitute a prohibited offer or promise **must** report the request or directive to the OEIG or their ethics officer.

Ethics Question

Kate is a supervisor at a state agency. Kate has been working on a friend's campaign for elective office and decides to ask her staff to help her friend by making a campaign donation. When no one volunteered to make a donation, Kate told her staff that anyone who donates a small amount will receive a new office chair.

Is Kate's offer allowed under the Ethics Act?

- A. Yes, as long as staff makes campaign donations outside of their state employment hours.
    - TRY AGAIN. Because the new office chairs are conditioned on donating to Kate's friend's campaign, Kate's offer is not allowed under the Ethics Act.
- B. Yes, new office chairs could improve office morale and therefore her offer does not qualify as political activity.
    - TRY AGAIN. It is against the Ethics Act to trade a political contribution for any kind of employment benefit.
- C. No, state employees are prohibited from offering or accepting anything of value related to state government in consideration for a political campaign contribution.
    - **Correct!** Donating money to a political campaign qualifies as a political contribution, and it is against the Ethics Act to trade a contribution for any kind of employment benefit. The office chairs are an employment benefit because employees who do not donate will not receive new office chairs.

Public Service Announcements

The Ethics Act prohibits any public service announcements or ads on behalf of any state administered program that contain the proper name, image, or voice of any executive branch constitutional officer or member of the General Assembly from being: on radio or TV, in a commercial newspaper or magazine, or on a billboard or electronic message board.

Furthermore, the proper name or image of any executive branch constitutional officer or member of the General Assembly may not appear on any bumper stickers, commercial billboards, lapel pins or buttons, magnets, stickers, and other similar promotional items, if those items are not part of the official's public functions and public funds are used for their creation, purchase, or distribution. *See* 5 ILCS 430/5-20.

Lesson 3 Summary

In this lesson you should have learned:

- state employees and officials must not engage in prohibited political activities during compensated time or by using state property or resources;
- state employees must not solicit, offer, make, or accept political contributions on state property;
- state employees must not ask for or accept political contributions from anyone whom they have authority to inspect, license, investigate, or regulate;
- state employees must not offer anything of value related to state government in exchange for political contributions; and
- certain public service announcements and ads for state programs, as well as promotional items paid for using public funds that do not promote a public function, may not bear the voice, image, or name of constitutional officers.

Lesson 4: Ethics Rules for All State Employees

Subjects in Lesson 4:

- Gift Ban
- Bribery
- Official Misconduct

Gift Ban

As a state employee, you (and some of your family members) may not ask for or accept a gift from a prohibited source. A **prohibited source** is someone who:

- seeks an official action from you, those who direct you, or your state agency;
- does business or seeks to do business with you, those who direct you, or your state agency;
- conducts activities that are regulated by you, your state agency, or those who direct you;
- has interests that may be substantially affected by the performance or nonperformance of your official duties;
- is a registered lobbyist or is required to register as a lobbyist with the Secretary of State; or
- is an agent of, a spouse of, or an immediate family member living with a prohibited source.

Gift Ban

Under the Ethics Act, **gifts** include, among other things, entertainment, hospitality, loans, discounts, and any other tangible or intangible items having monetary value, such as cash, food, and drinks.

Asking for or accepting a gift may be unlawful under the Ethics Act, and/or could be prohibited by your state agency's policies.

For Example:

A state employee was fined $1,000 by the EEC for accepting a $100 gift certificate and $197.99 bottle of spirits from representatives of a prohibited source. (EEC decision #18-EEC-011)

In some instances, agency policies and board-specific laws may be **more restrictive** than the Ethics Act's gift ban, such as Executive Order 15-09, which is discussed later in this training.

Gift Ban - Exceptions

The Ethics Act's gift ban has some exceptions that allow you to accept gifts from a prohibited source. These exceptions include, for example:

- items that are given from one state employee to another state employee;
- any items for which the state employee pays the fair market value;
- gifts that state employees receive from a relative or friend;
- items available to the general public on the same terms; and
- educational missions, or travel expenses for a state employee's attendance at a meeting to discuss state business (assuming you follow additional steps required by 2 Ill. Admin. Code, Section 1620.700 for these exceptions).

For a complete list of the exceptions, please refer to Section 10-15 of the Ethics Act.

In general, it is recommended that you simply decline anything of value offered to you (other than your salary) in relation to your official duties.

Gift Ban

Please consider which of the following is correct?

If you receive a prohibited gift, you do not violate the law if you **promptly** take reasonable action to:

- return the gift to its source; or
- give the gift, or an amount equal to the gift's value, to a non-profit organization organized under Section 501(c)(3) of the Internal Revenue Code.

Click next to reveal the best answer.

Gift Ban

Either of these answers is correct.

If you receive a prohibited gift, you do not violate the law if you promptly take reasonable action to:

- return the gift to its source;
- give it to a non-profit organization; or
- give an amount equal to its value to a non-profit organization.

Gift Ban

Executive Order 15-09 established more restrictive gift ban policies. The Executive Order:

- requires state employees to obtain prior approval from the Executive Director of the EEC for business meeting travel expenses and educational missions in order for the expenses to be paid by a prohibited source;
- allows only de minimis (i.e., minimal) meals or refreshments served at business meetings or receptions to be paid for by prohibited sources; and
- indicates that the exception for receiving gifts from any one prohibited source during a calendar year with a cumulative value of less than $100 does not apply to state employees and appointees.

Ethics Question

Alex is a state employee who sits on his agency's vendor selection committee. After hearing a vendor's pitch for a state contract, Alex has a conversation with the vendor. Alex mentions that he is planning a family trip to Salt Lake City, Utah. The vendor tells Alex that she owns a property in Salt Lake City that Alex may use at no cost, even though she normally rents it out for $300 per night.

Under the Ethics Act, may Alex lawfully accept the hospitality offered by the vendor?

- A. No, Alex cannot accept the gift as it was offered at no cost.
  - **Correct!** Alex cannot accept the gift at no cost since that would be a gift that would not fall within any gift ban exceptions. Under the Ethics Act, Alex could accept the accommodation if he paid the market value to rent it. However, accepting any gift from a prohibited source may appear inappropriate, so Alex should probably avoid taking an action that may appear improper. If you are unsure about whether you may accept a gift, consult with your agency's Ethics Officer.
- B. No, state employees may never accept anything from a prohibited source.
  - This is not the best answer
- C. Yes, because no one at Alex's agency knows where he is planning to vacation.
  - This is not the best answer

Bribery

Bribery occurs when you ask for or accept any property or personal advantage in exchange for taking or not taking (or influencing someone else to take or not take) an official act.

It is unlawful for you to accept something of value, such as cash, free services, loans, or travel expenses, in exchange for taking an official action, such as authorizing state financial aid, selecting an individual for a state job, renewing a state contract, expediting the issuance of a professional license, or compiling state records.

If you solicit or accept anything in exchange for an official act, you could face criminal bribery charges. *See* 720 ILCS 5/33-1.

In addition, any state officials or employees who are offered a bribe, even if they decline to accept the bribe, **must report the bribery attempt** to the Illinois State Police. Failure to report a bribe or an offer of a bribe is a Class A misdemeanor.

Bribery and the Gift Ban

Exceptions to the gift ban do not apply to the bribery statute. State employees may not solicit or accept **any** gifts in exchange for performing official acts.

As a reminder, state employees must make certain their solicitation or acceptance of any gift is permitted under their state agencies' policies and other applicable laws or policies, **which may be more restrictive than the Ethics Act**.

Official Misconduct

As a state employee or official, you commit **official misconduct** when, in your official capacity, you:

- intentionally or recklessly fail to perform any mandatory duty as required by law;
- knowingly perform an act which you know you are forbidden by law to perform;
- perform an act in excess of your lawful authority with intent to obtain a personal advantage for yourself or another; or
- solicit or knowingly accept for the performance of any act a fee or reward which you know is not authorized by law.

If you are convicted of official misconduct, you may forfeit your office or employment. In addition, official misconduct is a Class 3 felony. *See* 720 ILCS 5/33-3.

Lesson 4 Summary

In this lesson you should have learned:

- you should not accept anything of value, other than your state compensation, in exchange for performing your state duties;
- exceptions to the gift ban do not excuse bribes; and
- failing to perform state duties or performing actions outside of the scope of your duties can be a criminal offense.

Lesson 5: Rules for Certain Circumstances

Subjects in Lesson 5:

- Ethical Hiring Practices
- Revolving Door
- Procurement Communications
- Ex Parte Communications

Ethical Hiring Practices

The Ethics Act directs the OEIG to review hiring and employment to ensure compliance with governing employment laws and regulations. As part of its regular investigations, the OEIG reviews misconduct related to hiring decisions and agency hiring practices.

The OEIG also has a **Hiring & Employment Monitoring (HEM) Division**, which operates independently from its investigation unit, to conduct compliance-based reviews of hiring decisions and recommend changes regarding personnel practices. The HEM Division's work includes monitoring all aspects of certain hiring sequences to ensure compliance with hiring procedures for job-protected positions.

The OEIG HEM Division is also assisting the court-appointed Special Master's Office with its review of agency hiring practices, including analyzing hiring decisions and processes, as well as the manner in which jobs are classified.

Ethical Hiring Practices

Most positions in state government must be filled on an objective, merit basis, without regard to an applicant's political affiliation or support. The majority of state employees should be hired and promoted for their skills and abilities and not for who they know or what political connections they have. These positions are commonly referred to as "covered," "job-protected," "Personnel Code-protected," "code-protected," or "*Rutan*-covered" positions. Here, we will refer to these positions as "**job-protected positions**."

All job-protected positions must be posted and filled using a competitive selection process. In addition, employees in job-protected positions can only be fired for cause.

Ethical Hiring Practices

Principles and commitments pertaining to job-protected positions have been established and apply to all agencies, boards, and commissions under the governor's jurisdiction. These principles include:

- the state shall establish verifiable, objective minimum qualifications for every position, which must be included in each official position description and directly relate to the position's duties and responsibilities;
- position descriptions must be reviewed and, if necessary, updated prior to posting, to reflect current duties, responsibilities, and requirements;
- interviewers must make their assessments of candidates based on pre-determined hiring criteria and with uniform questions related to the position's duties;
- CMS must approve all hiring decisions before formal offers of employment are made by the agencies;

Ethical Hiring Practices

Principles and commitments pertaining to job-protected positions have been established and apply to all agencies, boards, and commissions under the governor's jurisdiction. These principles include - **continued**:

- hiring or other employment actions, e.g., promotion, shall not be influenced by improper political reasons or factors;
- state employees who learn of or have reason to believe political discrimination has occurred should immediately report these instances to the OEIG; and
- required agency personnel must certify that an employment decision was not based on or due to improper political considerations, e.g., party affiliation or support, or lack thereof.

Ethical Hiring Practices

Only a limited number of state jobs are exempt from these hiring requirements; these positions may commonly be referred to as "*Rutan*-exempt," "*Shakman*-exempt," "Personnel Code-exempt," "exempt," or "at-will" positions. Here, we will refer to these positions as "**at-will positions**." The state has committed to ensuring that no at-will positions are afforded job protection(s).

Employees can be hired into at-will positions without going through a competitive interview process and can be discharged from these positions without cause. New hiring guidelines require agency staff to give notice to the OEIG, among others, of all hiring into at-will positions, and require that they certify that selected candidates are minimally qualified for their positions.

An updated list of at-will positions, with incumbents, referred to as the "State Exempt List," can be found on CMS's website.

Revolving Door

Revolving door employment restrictions apply to **all** state employees or appointees (and to their spouses or immediate family members living with them) if, ***during the year before leaving state employment***, the state employees or appointees:

- **participated personally and substantially** in the award of state contracts or contract change orders with a cumulative value of $25,000 or more to their non-state prospective employer, or its parent or subsidiary; or
- **participated personally and substantially** in making a regulatory or licensing decision that directly applied to the prospective employer, or its parent or subsidiary.

If a state employee has participated personally and substantially in any of the foregoing transactions, that state employee (and any spouse or immediate family members living with the employee) is **prohibited from accepting the prospective non-state employment offer for *ONE YEAR* after *leaving* state employment**. *See* 5 ILCS 430/5-45(a) and (b).

Revolving Door

State employees in positions that, by the nature of their duties, may have the authority to participate personally and substantially in the award of state contracts or in regulatory or licensing decisions, have a duty to notify the OEIG prior to accepting an offer of non-state employment. Such employees are referred to as being on the "**c-list**" because they are identified pursuant to subsection (c) of Section 5-45 of the Ethics Act. Employees on agency c-lists should be told in writing that they are on the c-list by their respective state agencies.

C-list employees who, during state employment and for one year after leaving state employment, want to accept an offer of compensation or employment from a non-state employer **must** notify and seek a determination from the OEIG **before accepting** the offer.

Revolving Door

To notify the OEIG about a prospective job offer, employees should go to the OEIG's website and follow the revolving door instructions, which include having employees and their ethics officers complete certain forms: OEIG Revolving Door Instructions and Forms.

Within 10 calendar days of receiving these two forms, the OEIG will determine if a state employee is restricted from accepting the job offer and will notify that employee of the determination.

The OEIG's determination will be based on whether, during the year prior to leaving state employment, the state employee participated personally and substantially in any relevant contract awards or regulatory or licensing decisions directly applying to the prospective employer, or its parent or subsidiary. The OEIG will also examine the effect that the prospective employment may have had on any such awards or decisions.

The OEIG's determination may be appealed to the EEC by the affected employee or the Office of the Attorney General no later than 10 calendar days after the date of the determination. The EEC must issue its decision within 10 calendar days. Therefore, the OEIG's determination is not final until the time to appeal has expired or the EEC has made its decision on an appeal.

Revolving Door

Certain state employees and appointees in high-ranking positions are strictly prohibited from knowingly accepting employment or receiving compensation from certain individuals or entities for one year after leaving state employment, **regardless of whether they were involved in regulatory, licensing, or contract decisions**. *See* 5 ILCS 430/5-45(h).

These broader restrictions apply to:

- persons whose appointment to office is subject to the advice and consent of the Illinois Senate;
- the head of a department, commission, board, etc., or other administrative unit within state government;
- chief procurement officers, state purchasing officers, and their designees whose duties are directly related to state

procurement;
- chiefs of staff, deputy chiefs of staff, associate chiefs of staff, assistant chiefs of staff, and deputy governors;
- members of a commission or board created by the Illinois Constitution; and
- members of the General Assembly or executive or legislative branch constitutional officers.

Revolving Door

Persons in these high-ranking positions are referred to as being on the "**h-list**" because they are governed by subsection (h) of Section 5-45 of the Ethics Act. They may not accept employment, compensation, or fees from a prospective employer for **one year after leaving state employment** if the prospective employer, or its parent or subsidiary, during the year immediately prior to the employee leaving state employment, was:

- a party to a state contract or contracts with a cumulative value of $25,000 or more involving the state employee's agency; or
- subject to a regulatory or licensing decision involving the state employee's agency.

There is **no determination process** through the OEIG **for people on the h-list**. If h-list employees have questions about prospective job offers, they may contact their ethics officers for guidance.

If you are not on either the c-list or h-list, you may still seek a determination from the OEIG about a prospective job offer.

Revolving Door

***New* Additional Revolving Door Restrictions for Gaming Agency Employees**

Based on a recent Ethics Act amendment, employees of the Illinois Gaming Board and Illinois Racing Board are now also included on the "h-list" and thus are subject to the restrictions described on the previous slide. 5 ILCS 430/5-45(h)(7) & (8).

Employees of the Illinois Gaming Board and Illinois Racing Board, as well as their spouses and immediate family members living with them, also may not hold an ownership interest in any gaming license issued under Illinois law for **two years** after leaving state employment. 5 ILCS 430/5-45(a-5).

Revolving Door

The penalties for violating the Ethics Act revolving door provisions may be substantial. The EEC can fine a state employee who accepts compensation or employment in violation of these provisions an amount of **up to three times the annual compensation** that would have been obtained in violation of the Ethics Act's revolving door employment prohibitions.

In addition, c-list employees who fail to notify the OEIG of a prospective job offer and seek a determination may face a fine of **up to $5,000**.

For Example:

A former state employee was recently fined over **$154,000** by the EEC for receiving compensation from an entity that he had been personally and substantially involved in awarding a contract to in the year prior to his departure from his state job. The fine represented the total compensation he received, in violation of the revolving door employment restrictions, for work he performed during the year after he left his state job. The EEC arrived at this decision, even though the employee received the improper compensation through a subcontract with another entity, as it was merely a "pass through" for the compensation. (EEC decision #17-EEC-003)

Revolving Door

Additional Revolving Door Restrictions in the Illinois Procurement Code

Certain state employees, whose principal duties for at least six months are directly related to state procurement, and executive officers confirmed by the Illinois Senate, are prohibited from engaging in any procurement activity on behalf of a post-state employer relating to the state agency most recently employing them. This prohibition extends for two years after leaving the state agency. Relatedly, a state employee with an offer or contract to work for a vendor at any time in the future may not negotiate with that vendor on behalf of the state. *See* Sections 50-15 and 50-30 of the Illinois Procurement Code for more details.

Additional Revolving Door Restrictions Instituted by Executive Order

Under the terms of Executive Order 15-09, state employees and appointees under the governor's jurisdiction are prohibited from: (1) negotiating post-state employment with an entity that lobbies their agency while the employee is working for the state, and (2) accepting compensation for lobbying state executive agencies for one year after leaving their state position.

Ethics Question

Chris is a state employee. When hired, Chris received written notification that the position may have the authority to participate personally and substantially in the award of state contracts. Chris is planning to leave the state job and was recently offered a temporary contract position by a vendor that works for Chris's state agency.

What actions, if any, must Chris take before accepting the temporary contract offer?

- A. None, because revolving door employment restrictions only apply to permanent employment offers.
    - TRY AGAIN. Revolving door restrictions apply to any offer of employment, regardless of whether it is an offer for permanent or temporary employment.
- B. Chris should inform the vendor that it could be fined for making an employment offer to a state employee.
    - TRY AGAIN. The vendor cannot be fined for extending an employment offer to Chris. Penalties for violating the Ethics Act revolving door restrictions apply to state employees, not to an entity that makes an employment offer to a state employee.
- C. Chris must notify the OEIG and obtain its determination before accepting the employment offer.
    - **Correct!** Chris must notify the OEIG and obtain its determination prior to accepting the employment offer. If the OEIG determines Chris is not restricted, Chris may then accept the employment offer.

Memorializing Communications

Several statutes, including the Illinois Procurement Code and the Ethics Act, require state employees under certain circumstances to create records of communications they may receive. Generally, these laws aim to ensure transparency and fairness in regulatory, quasi-judicial, procurement, and other matters by ensuring that all interested parties are aware of relevant communications between the agency and other interested parties.

Memorializing Communications

Procurement Communications (Illinois Procurement Code, 30 ILCS 500/50-39, 50-40, and 50-45; 2 Ill. Admin. Code, Sections 1620.825, 1620.826, and 3002)

The State of Illinois spends billions of dollars each year through the procurement process. In order to protect the integrity of the procurement process, laws require state employees who may have authority to participate personally and substantially in the decision to award a state contract to memorialize certain communications.

Any state employees who have authority to participate in contract award decisions, and who receive certain communications about an active procurement matter, including contract awards, change orders, and contract renewals or extensions, **must** ensure that the communications are included in the official record of the award decision or documented in any other way proscribed by the relevant laws.

Memorializing Communications

Communications must be recorded and reported to the Procurement Policy Board if the communication: (1) imparts or requests material information (such as information about price, quantity, terms of payment, or performance) or makes a material argument; (2) is in regards to a potential action; (3) is related to an active procurement matter; AND (4) is not otherwise excluded by law.

Employees should memorialize these communications, whether by phone call, email, letter, in-person conversation, or otherwise. The report of the communication must include, among other things, the name of the party that made the communication, the date, time, and duration of the communication, the method of communicating, and a summary of its substantive content. *See* 30 ILCS 500/50-39(b) for details about what needs to be reported.

Memorializing Communications

In some instances, for example if a communication is made by a lobbyist, state employees should attempt to obtain documentation from the person who initiated the communication to memorialize the communication. However, even after receiving such documentation, state employees are still required to create their own written reports. These reports should be filed with the Procurement Policy Board. *See* 2 Ill. Admin. Code, Section 3002.1400(b).

If any of the communications described in this page and the preceding pages are made in a formal public hearing; are privileged, protected, or confidential by law; or are about general procedural steps, like the format or number of copies to be submitted, then the employee does not need to record or report the communication. The Illinois Procurement Code lists additional exceptions to these reporting requirements.

Memorializing Communications

Any state employee who suspects collusion or other anticompetitive practices among any bidders, offerors, contractors or state employees, **must** report those suspicions to the OEIG, the Office of Attorney General, and the Chief Procurement Officer. *See* 30 ILCS 500/50-40.

Certain state employees who willfully use details of procurement matters to compromise the fairness or integrity of the procurement process may be subject to dismissal and criminal prosecution. *See* 30 ILCS 500/50-45.

Memorializing Communications

Ex Parte Communications in Rulemaking

(Illinois Administrative Procedure Act, 5 ILCS 100/5-165)

State law also requires employees at all agencies who are involved in rulemaking to memorialize certain conversations.

Under the Illinois Administrative Procedure Act, an "**ex parte communication**" is any written or oral communication by any person, during the rulemaking period, that provides or requests information of a material nature or makes a material argument regarding potential action concerning a state agency's general, emergency, or peremptory rulemaking that is communicated to the head of the agency or an employee of the agency and is:

- not made in a public forum;
- not a statement limited to matters of procedure and practice; and
- not a statement made by a state employee to fellow employees of the same board or agency.

Memorializing Communications

An ex parte communication that is received by any agency, its head, or its employee must be immediately reported to the agency's ethics officer. The ethics officer must ensure the communication is made a part of the record for the rulemaking proceeding and must promptly file the communication with the EEC. **These requirements under the Illinois Administrative Procedure Act apply to *all* state agencies.**

If you have any questions concerning whether a communication is subject to these ex parte communication rules, you may seek the advice of your state agency's ethics officer.

Memorializing Communications

Ex Parte Communications in Regulatory, Quasi-Adjudicatory, Investment, and Licensing Matters (Ethics Act, Section 5-50)

In addition to the Illinois Administrative Procedure Act, the Ethics Act sets forth ex parte communication rules that apply only to certain agencies that have particular roles in regulatory, quasi-adjudicatory, investment, and licensing matters. The list of these agencies can be found at 5 ILCS 430/5-50(e).

For any of these agencies, an ex parte communication **from an interested party** must be promptly memorialized and made part of the official record if the communication imparts or requests information of a material nature or makes a material argument concerning matters pending or under consideration by these entities. An ex parte communication **from anyone else** shall be immediately reported to the ethics officer.

Ex parte communications do not need to be reported when made at a formal hearing.

Ethics Question

Bailey works for a state agency that is currently accepting bids for a new food vendor for the agency's cafeteria. Bailey is on the evaluation committee and will participate in choosing the new vendor from the submitted bids. Last night, an employee of one of the bidding companies approached Bailey at the grocery store and asked when the agency plans to select the winning bidder. Bailey told the bidder that the selection will be made in two weeks. The next morning, Bailey tells the agency ethics officer about the conversation, and asks what else needs to be done.

What should the ethics officer tell Bailey?

- A. The conversation was an improper procurement communication and Bailey may be subject to discipline or fines under the Illinois Procurement Code for failing to contact the ethics officer before answering the bidder's question.
  - This is not the best answer
- B. Bailey has done nothing wrong because the conversation was not the type of procurement communication that needs to be reported to the Procurement Policy Board or otherwise memorialized.
  - **Correct!** Conversations regarding matters of procedure and practice, or non-material questions seeking clarification, are not considered procurement communications that need to be reported under the Illinois Procurement Code. The conversation does not need to be memorialized or disclosed to the Procurement Policy Board. However, it is always best to consult your ethics officer if you are unsure about whether a conversation needs to be documented as a procurement or ex parte communication.
- C. The conversation was a procurement communication that Bailey should memorialize and disclose to the

Procurement Policy Board.
  - This is not the best answer

Lesson 5 Summary

In this lesson you should have learned:

- there are certain hiring practices in state agencies and such practices are monitored by the OEIG;
- most state employees may seek a determination from the OEIG about prospective non-state employment, and some employees **must** seek a "revolving door" determination prior to accepting the non-state employment; and
- certain employees may be required to disclose and report external procurement communications and ex parte communications about rulemaking, or regulatory, quasi-adjudicatory, investment, or licensing matters they receive.

Lesson 6: Truthfulness, Reporting, and Protections

Subjects in Lesson 6:

- Statements of Economic Interests
- Truthful Oral and Written Statements
- Duty to Cooperate in Investigations
- Reporting Misconduct
- Whistle Blower Protections
- Penalties

Statements of Economic Interests

Some state employees and appointees are required to file annual Statements of Economic Interests with the Secretary of State. *See* 5 ILCS 420/4A.

Statements of Economic Interests are intended to disclose certain financial interests that state employees may have, such as, but not limited to:

- an ownership interest in excess of $5,000 fair market value in an entity doing business in the state; and
- the identity of any capital asset from which a capital gain of $5,000 or more was realized.

If you are required to submit a Statement of Economic Interests, you should be notified annually of this requirement by the Secretary of State no later than April 1. Your ethics officer must review your completed Statement before it is submitted to the Secretary of State. The Statement must be filed with the Secretary of State before May 1. To review the Statement of Economic Interests form, click here: Statement of Economic Interests.

State employees who are required to file a Statement of Economic Interests also must answer four supplemental questions relating to property ownership, non-governmental positions, litigation with the state, and relatives in state government. The supplemental form should be filed electronically with the EEC. *See* Executive Order 15-09.

Truthful Written and Oral Statements

It is vital to the integrity of state government that all oral and written statements made by you, in your official capacity as a state employee or appointee, be made in an honest and truthful manner.

Falsifying official documents or making untruthful statements in the conduct of state business is unethical, would violate agency policies or state law, and may subject a state employee to administrative action up to and including a fine or termination of state employment, and in some instances may result in criminal prosecution.

For Example:

An employee was discharged from his state job for providing false information on his employment application. (OEIG Case #16-01981)

Truthful Statements and Cooperating in Investigations

As a state employee or appointee, under Section 20-70 of the Ethics Act and Executive Order 16-04, you have an obligation to cooperate in OEIG investigations. You must participate in interviews as requested, tell the truth, and not withhold information. Failure to cooperate includes, but is not limited to, intentional omissions and knowing false statements, and is grounds for disciplinary action, including dismissal. Monetary fines may also be assessed by the EEC for failing to cooperate with the OEIG's investigation.

For Example:

A state employee was fined **$1,000** by the EEC for intentionally obstructing and interfering with an OEIG investigation when he falsely answered questions in interviews and in written submissions to the OEIG afterwards. (EEC decision #18-EEC-005)

As a state employee or appointee, you also have various rights during investigations, including, but not limited to, those resulting from the Ethics Act and EEC rules (2 Ill. Admin. Code, Section 1620.300). Rules governing OEIG investigations can be found on the OEIG's website at: http://www.inspectorgeneral.illinois.gov.

Reporting Misconduct

If you witness misconduct or have evidence of it, you should report it to the proper authorities. Executive Order 16-04 **requires** you to report alleged misconduct **promptly to the OEIG or your ethics officer**.

Alleged violations may be reported to the OEIG anonymously. However, when filing an anonymous complaint, please ensure that there is sufficient detail concerning the allegations for an investigation to be initiated

To report a non-emergency violation of law, rule, or regulation, you should contact the OEIG via:

- its toll-free hotline at 866-814-1113,
- the Internet at: http://www.inspectorgeneral.illinois.gov, or
- a telecommunications device for the deaf at 888-261-2734.

In the event of an emergency, such as those involving the illegal possession or use of a weapon, you should contact the police.

Whistle Blower Protection

Two different statutes protect state employees against retaliation for reporting misconduct: The Illinois Whistleblower Act, 740 ILCS 174/20.2, and Article 15 of the Ethics Act.

Under these statutes, it is generally unlawful for **any employer**, including the state, to take **retaliatory action or threaten retaliation** for an employee's disclosure of information to a government or law enforcement agency if the employee has reasonable cause to believe that the information discloses a violation of a state or federal law, rule, or regulation.

"**Retaliatory action**" means the reprimand, discharge, suspension, denial of promotion, demotion, transfer, or change in the terms or conditions of the state employee's employment, taken in retaliation for a state employee's involvement in protected activity.

Whistle Blower Protection

If an employer retaliates against an employee in violation of these laws, the employee may bring a civil action against the employer that may result in:

- reinstatement of employment and seniority rights;
- back pay with interest; and
- compensation for any damages, including litigation costs, expert witness fees, and reasonable attorney fees.

Any employee who commits retaliation in violation of the Ethics Act may be subject to disciplinary action up to and including discharge by his or her state agency, as well as potential administrative action by the EEC.

Whistle Blower Protection

Neither the Ethics Act nor the Whistleblower Act prevent a state employee from being disciplined for matters unrelated to the above-listed protected activity.

For example, a state employee who discloses an unlawful act of another state employee may still be disciplined for failing to complete a required work assignment. Such discipline is allowable if it is demonstrated that the discipline (in this example, discipline for failing to complete a work assignment) would have been imposed in the absence of the employee's disclosure of the unlawful act.

Penalties

Penalties for violations of ethics-related laws, rules, and policies by state employees and appointees depend on the specific circumstances. Penalties may include administrative action (by a state agency, for example) up to and including termination of employment or appointment.

In addition, the EEC may levy monetary fines for certain violations of the Ethics Act. Illegal acts, such as bribery, solicitation misconduct, or official misconduct, may be prosecuted criminally.

Ethics Question

Grace is a state employee who has filed a complaint with the OEIG against her supervisor. During the OEIG's investigation, Grace completes very little work and can be seen talking with coworkers at the water-cooler for extended amounts of time. When Grace's annual performance evaluation is delivered, the supervisor noted that Grace's work performance had declined, and several of her assignments had not been completed. Grace complains to the agency ethics officer that her supervisor is retaliating against her by giving her a negative performance evaluation after Grace filed an OEIG complaint.

Has the supervisor retaliated against Grace?

- A. No, the supervisor completed an annual performance evaluation that reflects the reduced productivity of Grace's work.
    - **Correct!** The supervisor appears to have given Grace a negative performance review based on her reduced work productivity, not as retaliation for filing a complaint with the OEIG. Neither the Ethics Act nor the Whistleblower Act prevent a state employee from being disciplined for matters unrelated to a protected activity.

- B. Yes, any adverse action taken against an employee that has filed a complaint with the OEIG is considered retaliation.
    - This is not the best answer

- C. No, the supervisor would have to discharge Grace to be accused of retaliation.
    - This is not the best answer

Lesson 6 Summary

In this lesson you should have learned:

- certain employees may be required to file an annual Statement of Economic Interests;
- state employees are required to make truthful and complete written and oral statements while conducting state business;
- state employees are required to cooperate with OEIG investigations;
- state employees must report alleged misconduct to the OEIG or their ethics officer;
- there are protections for employees who report violations of the law; and
- there are penalties for violating the Ethics Act and other state laws.

Survey

If you have any comments on this training. For example, if you have suggestions for topics for future training, found certain sections of this training to be particularly confusing, or want to comment on any other training matter, please **Take our Survey**

Comments or questions about state policies or reports of potential violations should **NOT** be placed here.

If you have a question concerning a work-related ethics issue, please contact your state agency's ethics officer. To report a non-emergency violation of the law, rule, regulation, or policy, please contact the OEIG via its hotline at (866) 814-1113 or via TTY at (888) 261-2734.

Certification

Acknowledgement of Participation in:

2020 Ethics Training Program for State Employees and Appointees

"I certify that I have carefully read and reviewed the content of, and completed, the 2020 Ethics Training Program for State Employees and Appointees. Furthermore, I certify that I understand that my failure to comply with the laws, rules, policies and procedures referred to within this training course may result in disciplinary action up to and including termination of State employment/appointment, administrative fines, and possible criminal prosecution, depending on the nature of the violation."

Exhibit 5

DiDomenico, John

From:	Bender, Bret
Sent:	Thursday, August 15, 2019 3:34 PM
To:	[redacted]
Subject:	RE: Notice/Acknowledgement of Revolving Door Provisions
Attachments:	Bret Bender Revolving Door Acknowledgement Signed.pdf

Acknowledged.

From: [redacted]
Sent: Thursday, August 15, 2019 2:58 PM
To: Bender, Bret <[redacted]@Illinois.gov>
Subject: Notice/Acknowledgement of Revolving Door Provisions

Dear IDFPR Employee,

Attached please find notification that your position is subject to the Revolving Door policy of the State Officials and Employees Ethics Act, 5 ILCS 430/5-45.

In order to comply with the Revolving Door policy: 1) review the attached Notice and Acknowledgement of Receipt of Revolving Door Provisions, 2) sign and date the form, and 3) scan and email the signed form to me.

Please note that an employee receiving this notification must certify in writing that the person was advised of the prohibition and the requirement to notify the appropriate Inspector General (5 ILCS 430/5-45(e)). Please contact me with any questions.

Thank you,
[redacted]

[redacted]
Senior Deputy General Counsel
Illinois Department of Financial and Professional Regulation
100 W. Randolph St., 9th Floor
Chicago, Illinois 60601
Ph: [redacted]

Illinois Department of Financial and Professional Regulation

NOTICE AND ACKNOWLEDGMENT OF RECEIPT OF REVOLVING DOOR PROVISIONS (5 ILCS 430/5-45)

NOTICE

Certain provisions of the revolving door restrictions contained in 5 ILCS 430/5-45 require that the Governor list all positions under his jurisdiction and control, as well as those of the executive branch not under the jurisdiction and control of any other executive branch constitutional officer, that by the nature of the positions' duties may have the authority to participate personally and substantially in the award of State contracts or in State regulatory or licensing decisions. Your position is listed as part of this policy.

ACKNOWLEDGMENT

I acknowledge that the position that I occupy is being submitted to the Executive Ethics Commission ("EEC") as required by statute, and further acknowledge and understand as follows:

5 ILCS 430/5-45(a) provides that "No former officer, member, or State employee, or spouse or immediate family member living with such person, shall, within a period of one year immediately after termination of State employment, knowingly accept employment or receive compensation or fees for services from a person or entity if the officer, member, or State employee, during the year immediately preceding termination of State employment, participated personally and substantially in the award of State contracts, or the issuance of State contract change orders, with a cumulative value of $25,000 or more to the person or entity, or its parent or subsidiary."

5 ILCS 430/5-45(b) provides that "No former officer of the executive branch or State employee of the executive branch with regulatory or licensing authority, or spouse or immediate family member living with such person, shall, within a period of one year immediately after termination of State employment, knowingly accept employment or receive compensation or fees for services from a person or entity if the officer or State employee, during the year immediately preceding termination of State employment, participated personally and substantially in making a regulatory or licensing decision that directly applied to the person or entity, or its parent or subsidiary."

I understand that if I am offered non-State employment during State employment or within one year immediately after ending State employment, I shall, prior to accepting any such non-State employment offer, notify the Office of the Executive Inspector General for the Agencies of the Illinois Governor ("OEIG"). I understand that if I do not notify the Office of the Executive Inspector General, I may be subject to a fine.

I understand that within ten calendar days after receiving notification, the OEIG shall make a determination as to whether I am restricted from accepting the employment offer pursuant to subsection (a) and (b) of 5 ILCS 430/5-45.

I understand that in addition to assessing any other relevant information in making a determination, the OEIG shall assess the effect of the prospective employment or relationship upon decisions referred to in subsections (a) and (b) of 5 ILCS 430/5-45, based on the totality of my participation in those decisions.

I understand that once my notification to the OEIG is complete, as set forth in the Administrative Code, a revolving door determination by the OEIG must be in writing, signed and dated by the EIG, and delivered to me within 10 calendar days or I am deemed eligible for the employment opportunity.

I understand that the OEIG's determination may be appealed to the EEC by either me or by the Office of the Attorney General no later than the 10th calendar day after the date of the determination. **I understand that an OEIG determination in the employee's favor is not final until either (i) the time to appeal has passed with no appeal being filed or (ii) if an appeal has been filed, the EEC has made a determination.** I understand that on appeal, the EEC shall seek, accept, and consider public comments regarding a determination. I understand that in deciding whether to uphold or reverse an EIG determination, the EEC shall assess, in addition to any other relevant information, the effect of the prospective employment or relationship upon the decisions referred to in subsections (a) and (b) above, based on the totality of the participation by me in those decisions. I understand that the EEC shall decide whether to uphold the EIG's determination within 10 calendar days or I am deemed eligible for the employment opportunity.

I understand that further information regarding the revolving door process can be found on the OEIG's website at
http://www.illinois.gov/oeig/revolvingdoor/Pages/revolvingdoorinstructions.aspx and http://www.illinois.gov/oeig/RevolvingDoor/Pages/RevolvingDoorFAQS.aspx.

I understand that I must read the attached provisions of the Act in their entirety and that my signature below certifies that I have read and understand those provisions in addition to the contents of this document.

If I have further questions regarding this requirement, I understand that I am encouraged to talk to my assigned Ethics Officer.

[redacted]
Employee Signature

8/15/19
Date

BEN-RD-CT-0059

Exhibit 6

10:32 5G

79

BB

Bret >

iMessage
Tue, Mar 22, 10:16 AM

Hi Bret, this is [redacted], [redacted] sent me your contact info regarding a role at AWH. Would you have time to connect this week?

Tue, Mar 22, 1:50 PM

Sorry for the slow reply, but ethics laws prevent me from engaging in these talks on state time and an endless stream of phone calls this morning prohibited me from morning prohibited me from going off state time until just now.

I have a bit of an odd schedule this week as I have inventory counts at dispensaries the next two mornings and it's difficult to estimate when they will conclude. Plus, both start at 7:30, so my morning routine is

Subject

iMessage

Cash

10:33 5G

79

BB

Bret

Sorry for the slow reply, but ethics laws prevent me from engaging in these talks on state time and an endless stream of phone calls this morning prohibited me from going off state time until just now.

I have a bit of an odd schedule this week as I have inventory counts at dispensaries the next two mornings and it's difficult to estimate when they will conclude. Plus, both start at 7:30, so my morning routine is a little harder to manage than my usual 8:30 start time.

I could do any day at 5 pm CDT or later or Friday before 8:30 central or during midday (my lunch timing is usually more flexible than it was today). Or, I have the next hour free until 1:45 CDT.

Subject

iMessage

Cash

10:33 5G

79

BB

Bret

1:45 CDT.

Hey Bret, I can't make now work but could do Thursday or Friday. Would 1:30 on Thursday or 2pm Friday work for you? Friday at 8am also works (all in CDT)

Friday at 8 would be the best time.

Best for me as well. Great, what is the best email to send an invitation to?

[redacted]@gmail.com

(The one "T" in Bret sometimes trips people up)

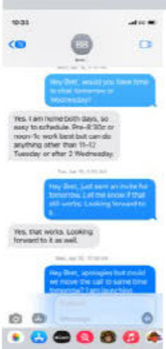
I look forward to connecting.

Mon, Apr 18, 5:14 PM

Subject

iMessage

Cash



10:33 5G

79

BB

Bret >

we move the call to same time tomorrow? I am launching NJAU and it's been a bit crazy. Tomorrow is opening day, but may actually work well.

Wed, Apr 20, 12:48 PM

I was a bit surprised by the timing of the call given the New Jersey situation, so this is no problem at all. I've worked a lot of political campaigns in my life and I imagine opening day is kind of like Election Day on a campaign where you've put in a tremendous amount of work leading up to this day, but now the machine is built and is self-operating, so there isn't a lot to do. One note for tomorrow, though is that I'll have a hard stop at 1.

That's exactly right! I hope tomorrow is the eye of the

Subject

iMessage

Cash

10:33 5G

79

BB

Bret >

storm. Thank you for being flexible.

Mon, Apr 25, 10:35 AM

Hey Bret, do you have time to talk later today? I think [redacted] sent you offer letter - it's actually not regarding that. Not urgent, if you have time.

Mon, Apr 25, 4:56 PM

Hey! Sorry on a call. Can I try you in an hour?

Yes

Mon, Apr 25, 6:45 PM

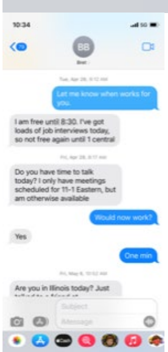
All set. I'll call you tomorrow.

👍

Subject

iMessage

Cash



10:34 5G

10:34 5G

79

BB

Bret >

Are you in Illinois today? Just talked to a friend at Pharmacann who was going to meet "a new VP at Ascend" in Oak Brook for lunch, which is a neighboring suburb to me.

Hey! No not me

I'll definitely let you know when I am out but it won't be for a few weeks.

Very happy to have you aboard!

Tue, May 31, 1:22 PM

Hey, when you talk to [redacted] about OH, dig in a little on the expansion of Marichron, and transfer of licenses.

10-4

Wed, Jun 1, 9:58 AM

Subject

iMessage

Cash

Exhibit 7

[redacted]

From: [redacted]
Sent: Friday, April 1, 2022 9:29 AM
To: Bret Bender
Subject: Re: Ascend - VP, Compliance

Hi Bret,

Thanks for the note. How about I ring you right at 1 pm EST today. We shouldn't be more than 20 or so minutes so you can enjoy your Michigan trip.

Thanks,

[redacted]
Manager, Talent Acquisition
[redacted]

AWH
ASCEND WELLNESS HOLDINGS

Follow AWH on LinkedIn

www.awholdings.com

From: Bret Bender <[redacted]@gmail.com>
Sent: Friday, April 1, 2022 7:46 AM
To: [redacted] <[redacted]@awholdings.com>
Subject: Re: Ascend - VP, Compliance

[redacted],

I have an update on my schedule. I have some time right now, but could solidly schedule something for 1pm EASTERN or later this afternoon.

On Thu, Mar 31, 2022 at 5:41 PM Bret Bender <[redacted]@gmail.com> wrote:

> Sorry about my schedule. I must closely monitor what communications I have on while on state time. I can certainly talk tomorrow. My friends and I are last minute planners for these sorts of trips, so I don't yet know our departure time tomorrow or where we'll stop. We will figure this out tonight and I'll contact you as early as possible to let you know

when it appears I will be able to have a few private moments. I won't be on state time tomorrow, so I won't have to wait until certain times to read and reply to emails.

On Thu, Mar 31, 2022 at 3:35 PM [redacted] <[redacted]@awholdings.com> wrote:

Hi Bret,

Thank-you for your note, sorry I didn't see your 1:00 pm CST availability. I'm happy to chat with you tomorrow when you arrive if you're willing to on your PTO. If not, do you have availability Monday?

Looking forward to hearing from you,

[redacted]

Manager, Talent Acquisition

[redacted]

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From: Bret Bender <[redacted]@gmail.com>
Sent: Thursday, March 31, 2022 12:20 PM
To: [redacted] <[redacted]@awholdings.com>
Subject: Re: Ascend - VP, Compliance

[redacted],

Great to hear from you! I do have some time between now and 1 Central, though that may be short notice for you [redacted] if that's doable for you). I am off work tomorrow, but will be in a car driving with friends to northern Michigan, so it may not be a great time to talk. However, I may be able to work something out later in the afternoon after we arrive at our destination. Please let me know what would work best for you.

On Thu, Mar 31, 2022 at 10:47 AM [redacted] <[redacted]@awholdings.com> wrote:

Hi Bret,

Hope you have had a great week! Quick introduction for you, my name is [redacted], and I am part of the recruiting team at Ascend. [redacted] has shared your contact information with me and let me know you both had an informal call regarding a potential opportunity as a VP of Compliance. He really enjoyed speaking with you and spoke highly of your impressive background. He asked if we could briefly connect to learn a little more about expectations on your end, and to gauge your interest in potentially pursuing this opportunity.

Do you have 10 - 15 minutes either today or tomorrow for us to chat?

Looking forward to speaking with you,

Thanks,

[redacted]
Manager, Talent Acquisition
[redacted]

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[redacted]

From: Bret Bender <[redacted]@gmail.com>
Sent: Sunday, April 3, 2022 9:34 AM
To: [redacted]
Subject: Re: Next Steps
Attachments: Bret Bender Résumé.pdf

[redacted]

It was nice talking to you. Hopefully we can talk again when I don't have a cold wind blowing in my face. Please find a copy of my résumé attached and let me know if there is anything you need from me.

Bret Bender
[redacted]

On Fri, Apr 1, 2022 at 1:16 PM [redacted] <[redacted]@awholdings.com> wrote:

Hi Bret,

Thanks again for being gracious with your PTO. I've scheduled your call with [redacted] VP Talent Acquisition for Monday at 12:00 pm CST. When you get the chance, can you please send over your resume?

If I can assist with anything between that time, let me know.

Looking forward to hearing the outcome of that call.

[redacted]
Manager, Talent Acquisition
[redacted]

AWH

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[redacted]

From: [redacted]
Sent: Monday, April 4, 2022 10:25 AM
To: Bret Bender
Subject: Re: Next Steps

Thank-you very much for being gracious with your time. Resume received, have a great week!

[redacted]
Manager, Talent Acquisition
[redacted]

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From: Bret Bender <[redacted]@gmail.com>
Sent: Sunday, April 3, 2022 8:34 AM
To: [redacted] <[redacted]@awholdings.com>
Subject: Re: Next Steps

[redacted],

It was nice talking to you. Hopefully we can talk again when I don't have a cold wind blowing in my face. Please find a copy of my résumé attached and let me know if there is anything you need from me.

Bret Bender
[redacted]

On Fri, Apr 1, 2022 at 1:16 PM [redacted] <[redacted]@awholdings.com> wrote:

> Hi Bret,
>
> Thanks again for being gracious with your PTO. I've scheduled your call with [redacted], VP Talent Acquisition for Monday at 12:00 pm CST. When you get the chance, can you please send over your resume?
>
> If I can assist with anything between that time, let me know.

Looking forward to hearing the outcome of that call.

[redacted]
Manager, Talent Acquisition
[redacted]

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Exhibit 8

[redacted]

From: [redacted]
Sent: Friday, April 22, 2022 3:25 PM
To: Bret Bender
Subject: Time to connect today

Hi Bret,

Just left you a voicemail. Let me know if you have 5 minutes to chat this afternoon about an offer with Ascend.

Thank-you!

[redacted]
Sr. Manager, Talent Acquisition
[redacted]

AWH

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From: DocuSign NA4 System <dse_NA4@docusign.net> on behalf of [redacted] via DocuSign <dse_NA4@docusign.net>
Sent: Friday, April 22, 2022 5:50 PM
To: [redacted]
Subject: Regional VP, Regulatory Compliance Offer of Employment - Ascend Wellness Holdings

[redacted] sent you a document to review and sign.

REVIEW DOCUMENT

[redacted]
[redacted]@awholdings.com

Bret Bender,

Congratulations on your offer of employment with Ascend!

You should consider this a contingent job offer, as your employment with Ascend Wellness Holdings is dependent upon your successful completion of 1) background screen which, depending on the position, may include (but might not be limited to) criminal, education, past employment, credit, reference checks 2) Covid-19 Vaccination.

* If you are currently employed, please DO NOT put in your 2 weeks' notice until background check comes back ELIGIBLE.

* To complete the background screenings, you will receive an email from our screening vendor, GoodHire, which will describe the next steps you must take to continue through the hiring process.

Please make sure to check your spam or junk mail if you do not receive anything from our team.

Upon successful completion of the Background Check and proof vaccination, Human

Resources and/or management team will confirm your employment Start date, time, location of your orientation and onboarding details including collection of your Covid-19 Vaccination Card.

IF you enjoyed your recruiting experience, please feel free to leave us a 5 -Star review on Glassdoor (https://www.glassdoor.com/mz-survey/employer/collectReview_input.htm?i=2926599&j=true&y=&c=PAGE_INFOSITE_TOP) and Indeed (https://www.indeed.com/survey/mc?cid=75207aa38715321f)

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Exhibit 9

MassGrow

Ascend Wellness Holdings, Inc.

1411 Broadway, 16th Floor
New York, NY 10018

ASCEND | MassGrow | MICHIGAN

Bret Bender
[redacted]**@gmail.com**
April 26, 2022

Dear Bret,

On behalf of MassGrow, LLC & Mass Mgmt Grp, LLC (the "Company"), I am very pleased to extend this offer of employment as **Regional VP, Regulatory Compliance.** The purpose of this letter is to summarize the terms of your employment with the Company should you accept this offer. Please indicate your acceptance by signing below and returning the signed letter by close of business on **April 29, 2022.**

Start Date
Your effective date of hire as a regular, full-time employee is **May 31, 2022**. Your start date is contingent upon successful completion of background check.

Responsibilities
In return for the compensation payments set forth in this letter, you agree to devote all of your professional time, best efforts, skill, knowledge, attention, and energies to the advancement of the Company's business and interests and to the performance of your duties and responsibilities as an employee of the Company. At minimum, you will competently perform the duties of the position as detailed in the Job Description. You will comply with all rules, directives, policies, procedures, and standards promulgated from time to time by the Company, as well as all governmental statutes, rules, regulations, and requirements (other than federal laws and regulations related to the cultivation, manufacture, distribution, and sale of cannabis and/or related products) applicable to the Company.

Compensation
Your compensation package will consist of the following:

1. You will receive an annual salary of **$190,000.00,** to be paid in accordance with the Company's regular payroll practices (currently bi-weekly), subject to applicable tax reporting and withholding requirements. This position is exempt, and you will not be eligible for overtime.
2. You will be eligible to participate in any employee benefits programs which the Company may offer to its employees. We pay one hundred percent (100%) of the premiums for both our employees and their families for medical. We also offer dental and vision insurance, but this cost is paid for by the employees.
3. You will be entitled to a flexible leave policy per the employee handbook.
4. You will be eligible to participate in the company 401k.
5. You would be eligible to in our Annual Incentive Plan (AIP) and Long-Term Incentive Plan (LTIP)
6. You will be eligible for a $100 monthly stipend for your cell phone & home internet.

Ascend Wellness Holdings, Inc.

1411 Broadway, 16th Floor
New York, NY 10018

PTO

You will be entitled to paid leave in accordance with the Company's paid leave policy, as in effect from time to time.

Annual Incentive Plan

You are eligible to participate in the Company's Annual Incentive Plan with a target of **35%** of base salary earned during the FY22 performance period contingent upon the achievement of financial, operational, and strategic/individual objectives. The bonus could be awarded in the form of cash and or equity. The terms of the bonus, including eligibility, payouts and objectives are subject to Board and Management approval and may be modified from time to time. All payouts are based on fiscal year performance, are discretionary, and can vary from 0% to 200%. If you are eligible to receive a bonus, any bonus payments could be awarded in the form of cash and equity and will be prorated based on your date of hire. You must be employed prior to October 1, 2022, to be eligible for a bonus under the Annual Incentive Plan for 2022 and must also continue to be employed at the time of payout.

Long Term Incentive Plan

You will be eligible to participate in the Company's Long Term Incentive Program, subject to Board and Management approval and discretion from year to year. You are eligible for a one-time equity grant targeted at 30% of your base salary prorated based on your date of hire. The grant will be in the form of restricted stock units and stock options and will be issued following your date of hire. Equity vests 25% annually over a four-year period, or over such other period as may be determined by the Board of Directors or its designees under the LTIP. The final number of restricted stock units and options is subject to the stock price and your salary on date of grant. You must be employed prior to October 1, 2022, to be eligible for the FY22 LTIP grant.

At-Will Employment

If you accept the Company's offer, your employment will be on an "at-will" basis, meaning that either you or the Company may terminate the employment relationship at any time, for any reason, with or without notice. Although your job duties, title, compensation, and benefits, as well as the Company's personnel policies and practices may change from time to time, the at-will nature of your employment may only be changed by a written agreement, signed by you and the Company, which expressly states the intention to modify the at-will nature of your employment.

Employment Eligibility

The Immigration Reform and Control Act requires employers to verify employment eligibility and identity of new employees. On your first day of employment, you must provide us with appropriate documents to establish your eligibility to work in the United States (e.g., social security card, driver's license, US passport). We will not be able to employ you if you fail to comply with this requirement.

DocuSign Envelope ID: 2BCED20A-E419-427B-9D23-99570DB05D60

Ascend Wellness Holdings, Inc.

MassGrow

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New York, NY 10018

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Work Environment
The Company maintains a smoke-free, drug-free workplace policy and supports equal employment opportunities for all its employees.

No Conflicts
By accepting this offer below, you represent (i) that you are subject to no agreements which might restrict your conduct at the Company, and (ii) that you understand that if you become aware at any time during your employment with the Company that you are subject to any agreements which might restrict your conduct at the Company, you are required to immediately inform the Company of the existence of such agreements or your employment by the Company will be subject to immediate termination.

Employee NDA
Enclosed for your review is a copy of the Company's Non-Disclosure and Assignment of Intellectual Property Agreement ("NDA"). This offer is conditioned on your signing the NDA and your continued willingness thereafter to abide by the terms of the NDA. You are required to sign the NDA when you countersign this offer letter.

Entire Offer
This letter constitutes our entire offer regarding the terms and conditions of your employment with the Company. It supersedes any other agreements or promises made to you by anyone regarding the subject matter hereof, whether oral or written.
I am confident that you will contribute greatly to the Company's success and look forward to welcoming you to the team.

Sincerely,
DocuSigned by:
[redacted]

NAME: [redacted]
TITLE: VP, Talent Acquisition

Accepted and agreed:
DocuSigned by:
[redacted]
D18775FDB0B040F...

Bret Bender

4/29/2022 | 9:08 AM EDT

Ascend Wellness Holdings, Inc.

1411 Broadway, 16th Floor
New York, NY 10018

ASCEND WELLNESS HOLDINGS, LLC
NONDISCLOSURE AND
ASSIGNMENT OF INTELLECTUAL PROPERTY AGREEMENT
Bret Bender

In consideration and as a condition of my association or continued association with Ascend Wellness Holdings, INC, a Delaware limited liability company (the "Company"), and in recognition of the fact that, as an associate of the Company, I will or may have access to confidential information, I agree with the Company as follows:

1. Association. As used herein, "association" or "associated" with the Company or similar term means a relationship with the Company as an employee, director, officer, consultant, advisor, independent contractor or other service provider, whether or not for compensation, and "associate" means one (including the undersigned) who is associated with the Company. All references to "the Company" herein shall include any predecessor or successor entity of the Company, any parent or subsidiary entity of the Company, or any predecessor or successor entity of any such parent or subsidiary entity.

2. No Conflicts. I hereby represent, warrant, and agree that (i) the execution, delivery, and performance of this Nondisclosure and Assignment of Intellectual Property Agreement (this "Agreement") does not and will not conflict with any agreement, policy, or rule applicable to me, (ii) that in the course of performing services for the Company or being associated with the Company, I will not violate the terms or conditions of any agreement between me and any third party or infringe or wrongfully appropriate any patents, copyrights, trade secrets, or other intellectual property rights of any person or entity anywhere in the world, (iii) that I will not disclose to the Company any information that I am required to keep secret pursuant to an existing confidentiality agreement with any third party, (iv) that I will not use the funding, resources, facilities, or inventions of any third party to perform the services for or on behalf of the Company, and (v) that I will not perform services for or on behalf of the Company in any manner that would give any third party rights to any intellectual property created in connection with such services.

3. Confidential Information. While associated with the Company and thereafter, I will not, directly or indirectly, use any Confidential Information (as defined below) other than pursuant to my association with, and for the benefit of, the Company, or disclose to anyone outside of the Company any such Confidential Information or as otherwise provided below. The term "Confidential Information" as used throughout this Agreement shall mean all trade secrets, proprietary information, and other data or information (and any tangible evidence, record, or representation thereof), written or oral, whether prepared, conceived, or developed by an associate of the Company (including myself) or received by the Company from an outside source, which is in the lawful possession of the Company (whether or not the property of the Company) and which is maintained in secrecy or confidence by the Company. Without limiting the generality of the foregoing, types of information that may be considered Confidential Information shall include (i) any idea, improvement, invention, innovation, development, concept, technical data, design, formula, device, pattern, sequence, method, process, composition

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of matter, computer program or software, source code, object code, algorithm, model, diagram, flow chart, product specification or design, plan for a new or revised product, sample, compilation of information, or work in process, or parts thereof, and any and all revisions and improvements relating to any of the foregoing (in each case whether or not reduced to tangible form), and (ii) the name of any customer, supplier, employee, prospective customer, sales agent, supplier or consultant, any sales plan, marketing material, plan or survey, business plan or opportunity, product or development plan or specification, business proposal, financial record, or business record or other record, or information relating to the present or proposed business of the Company.

Notwithstanding the foregoing, the term Confidential Information shall not apply to information which the Company has voluntarily disclosed to the public without restriction, or which has otherwise lawfully entered the public domain.

I acknowledge that the Company from time to time has in its lawful possession information (including product and development plans and specifications which represent such information) which is claimed by others to be proprietary and which the Company has agreed to keep confidential. I agree that, upon being informed of the confidential nature of such third-party information, all such information shall be Confidential Information for purposes of this Agreement.

I agree that all originals and all copies of materials containing, representing, evidencing, recording, or constituting any Confidential Information, however and whenever produced (whether by me or others), shall be the sole property of the Company.

Notwithstanding anything to the contrary in this Agreement or any other agreement between me and the Company, I understand that nothing in this Agreement is intended to interfere with or restrain the immunity provided under 18 U.S.C. section 1833(b) for confidential disclosures of trade secrets to government officials or lawyers, solely for the purpose of reporting or investigating a suspected violation of law, or in a sealed filing in court or other proceeding. I further understand that nothing in this Agreement or any other agreement between me and the Company prohibits, or is intended in any manner to prohibit, me from reporting possible violations of federal law or regulation to any governmental agency or entity, including but not limited to the Department of Justice, the Securities and Exchange Commission, the Congress, and any agency Inspector General, or making other disclosures that are protected under the whistleblower provisions of federal law or regulation. I do not need the prior authorization of anyone at the Company or the Company's legal counsel to make any such reports or disclosures, and I am not required to notify the Company that I have made such reports or disclosures.

4. Ownership and Assignment of Intellectual Property. I agree that all Confidential Information and all other discoveries, inventions, ideas, concepts, trademarks, service marks, logos, processes, products, formulas, computer programs or software, source codes, object codes, algorithms, machines, apparatuses, items of manufacture or composition of matter, or any new uses therefor or improvements thereon, or any new designs or modifications or configurations of any kind, or works of authorship of any kind, including without limitation, compilations and derivative works, whether or not patentable or copyrightable, conceived, developed, reduced to

practice, or otherwise made by me, either alone or with others, and in any way related to the business of the Company or to tasks assigned to me by the Company during the course of my association with the Company, whether or not made during my regular working hours, whether made prior to, on or after the date of this Agreement, whether or not conceived, developed, reduced to practice, or made on the Company's premises, (collectively "Company Inventions"), and any and all services and products which embody, emulate, or employ any such Company Invention or Confidential Information shall be the sole property of the Company and all copyrights, patents, patent rights, trademarks, and reproduction rights to, and other proprietary rights in, each such Company Invention or Confidential Information, whether or not patentable or copyrightable, shall belong exclusively to the Company.

I agree to, and hereby do, assign to the Company all my right, title, and interest throughout the world in and to all Company Inventions and to anything tangible which evidence, incorporates, constitutes, represents, or records any Company Invention. I agree that all Company Inventions shall constitute works made for hire under the copyright laws of the United States and hereby assign and, to the extent any such assignment cannot be made at present, I hereby agree to assign to the Company all copyrights, patents, and other proprietary rights I may have in any Company Inventions, together with the right to file for and/or own wholly without restriction United States and foreign patents, trademarks, and copyrights. I agree to waive, and hereby waive, all moral rights or proprietary rights in or to any Company Inventions and, to the extent that such rights may not be waived, agree not to assert such rights against the Company or its licensees, successors, or assigns.

I hereby certify that I do not claim rights in, or otherwise exclude from this Agreement any intellectual property that may otherwise be deemed a Company Invention, except the following:

Please see Exhibit A (to the extent any intellectual property is listed thereon, the "Prior Inventions").

None.

I understand that after execution of this Agreement, I shall have no right to exclude Confidential Information or Company Inventions from this Agreement.

I hereby represent and warrant to the Company that all work product delivered to the Company by me will not, without the Company's written consent, incorporate any Prior Invention. If I do incorporate a Prior Invention into work product delivered to the Company, I hereby grant to the Company a nonexclusive, royalty-free, paid-up, irrevocable, worldwide license (with the full right to sublicense) to make, have made, modify, use, sell, offer for sale and import such Prior Invention.

5. Retroactivity. The rights in intellectual property and other rights of the Company and my obligations described in Section 4 and the obligations of non-disclosure and confidentiality described in Section 3 are retroactive to the beginning of my work with or for the Company before the date hereof and shall apply to Company Inventions developed at any time during such work and to Confidential Information received by me at any time, including without limitation, in each case, prior to the Company's formation.

Ascend Wellness Holdings, Inc.

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New York, NY 10018

6. Obligation to Keep Records. I shall keep records of all Company Inventions in accordance with standard industry practice, which records shall be available to and remain the property of the Company at all times. I shall disclose all Company Inventions promptly, fully, and in writing to the Company immediately upon production or development of the same and at any time upon request.

7. Obligation to Cooperate. I will, at any time during or after my association with the Company, upon request of the Company, execute all documents and perform all lawful acts which the Company considers necessary or advisable to secure its rights hereunder and to carry out the intent of this Agreement. Without limiting the generality of the foregoing, I will assist the Company in any reasonable manner to obtain for its own benefit patents or copyrights in any and all countries with respect to all Company Inventions assigned pursuant to Section 4, and will execute, when requested, patent and other applications and assignments thereof to the Company, or persons designated by it, and any other lawful documents deemed necessary by the Company to carry out the purposes of this Agreement, and I will further assist the Company in every reasonable way to enforce any patents and copyrights obtained, including testifying in any suit or proceeding involving any of said patents or copyrights or executing any documents deemed necessary by the Company. It is agreed that after my association with the Company terminates, the Company will compensate me for my time on the basis of reasonable and customary hourly fees and the Company will reimburse reasonable out-of-pocket expenses incurred at the request of the Company under this Section 7.

8. Non solicitation of Personnel. Subject to written waivers by the Company, during my association with the Company and for a period of 12 months after the termination of my association with the Company for any reason, I shall not solicit, induce, attempt to hire, or hire any associate of the Company (or any person who may have been associated with the Company during the term of my association with the Company), or assist in such hiring by any other person or business entity or encourage any such associate to terminate his or her association with the Company.

9. Non solicitation of Customers and Suppliers. During my association with the Company and for a period of 12 months after the termination of my association with the Company for any reason, I shall not solicit, endeavor to entice away from the Company or otherwise interfere with the relationship of the Company with any current or former customer, client, supplier or similar business relation of the Company, or any person or entity reasonably understood to be a prospective customer, client, supplier or similar business relation of the Company.

10. Company Policies. At all times while providing services to the Company, I shall comply with all rules, directives, policies, procedures, and standards promulgated from time to time by the Company, as well as all governmental statutes, rules, regulations, and requirements (other than federal laws and regulations related to the cultivation, manufacture, distribution and sale of cannabis and/or related products) applicable to the business of the Company.

11. Return of Property. Upon termination of my association with the Company, or at any other time upon request of the Company, I shall return promptly any and all customer or prospective customer lists, other customer or prospective customer information or related materials, computer programs, software, electronic data, specifications, drawings, blueprints,

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data storage devices, reproductions, sketches, notes, notebooks, memoranda, reports, records, proposals, business plans, or copies of them, other documents or materials, tools, equipment, or other property belonging to the Company or its customers which I may then possess or have under my control. I further agree that upon termination of association with the Company I shall not take with me any documents or data in any form or of any description containing or pertaining to Confidential Information or Company Inventions.

12. Miscellaneous.

(a) This Agreement contains the entire and only agreement between me and the Company with respect to the subject matter hereof, superseding any previous oral or written communications, representations, understandings, or agreements with the Company or any officer or representative hereof. In the event of any inconsistency between this Agreement and any other contract between me and the Company, the provisions of this Agreement shall prevail.

(b) My obligations under this Agreement will continue in accordance with its express terms regardless of any changes in my title, position, duties, salary, compensation or benefits or other terms and conditions of my association with the Company. My obligations under this Agreement shall survive the termination of my association with the Company regardless of the manner of or reasons for such termination, and regardless of whether such termination constitutes a breach of any other agreement I may have with the Company. My obligations under this Agreement shall be binding upon my heirs, assigns, executors, administrators, and representatives, and the provisions of this Agreement shall inure to the benefit of and be binding on the successors and assigns of the Company. This Agreement and my rights and obligations hereunder are not assignable by me, in whole or in part. This Agreement and any rights or obligations hereunder may be assigned by the Company, in whole or in part, in connection with any sale of the Company, its assets or the assets of any business unit of the Company with which I am or have been associated or any merger or consolidation involving the Company, and thereafter shall inure to the benefit of the purchaser or surviving company, as the case may be, in such transaction as fully as if it were the Company. I expressly consent to be bound by the provisions of this Agreement for the benefit of the Company or any parent, subsidiary, or affiliate to whose employ I may be transferred without the necessity that this Agreement be re-signed at the time of such transfer. I agree to provide a copy of this Agreement to any prospective employer, partner or coventurer prior to entering an employment, partnership or other business relationship with such person or entity.

(c) If any provision of this Agreement shall be determined to be unenforceable by any court of competent jurisdiction by reason of its extending for too great a period, or over too large a geographic area, or over too great a range of activities, it shall be interpreted to extend only over the maximum period, geographic area, or range of activities as to which it may be enforceable. If, after application of the immediately preceding sentence, any provision of this Agreement shall be determined to be invalid, illegal, or otherwise unenforceable by any court of competent jurisdiction, the validity, legality, and enforceability of the other provisions of this Agreement shall not be affected thereby. Except as otherwise provided in this paragraph, any

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invalid, illegal, or unenforceable provision of this Agreement shall be severable, and after any such severance, all other provisions hereof shall remain in full force and effect.

(d) I acknowledge and agree that violation of this Agreement by me would cause irreparable harm to the Company not adequately compensable by money damages alone, and I therefore agree that, in addition to all other remedies available to the Company at law, in equity or otherwise, the Company shall be entitled to injunctive relief to prevent an actual or threatened violation of this Agreement and to enforce the provisions hereof, without showing or proving any actual damage to the Company or posting any bond in connection therewith.

(e) No failure by the Company to insist upon strict compliance with any of the terms, covenants, or conditions hereof, and no delay or omission by the Company in exercising any right under this Agreement, will operate as a waiver of such terms, covenants, conditions, or rights. A waiver or consent given by the Company on any one occasion is effective only in that instance and will not be construed as a bar to or waiver of any right on any other occasion.

(f) This Agreement may not be changed, modified, released, discharged, abandoned, or otherwise amended, in whole or in part, except by an instrument in writing signed by me and the Company.

(g) This Agreement shall be governed by, and construed and enforced in accordance with, the substantive laws of the State of New York, without regard to its principles of conflicts of laws. Each of the parties hereto submits to the jurisdiction of the state and federal courts of the State of New York. This Agreement is executed under seal.

[Signature page follows]

BY PLACING MY SIGNATURE HEREUNDER, I ACKNOWLEDGE THAT I HAVE READ ALL THE PROVISIONS OF THIS NONDISCLOSURE AND ASSIGNMENT OF INTELLECTUAL PROPERTY AGREEMENT AND THAT I AGREE TO ALL OF ITS TERMS.

4/29/2022 | 9:08 AM EDT
Date:________________________

DocuSigned by:
[redacted]
D18775FDB0B040F...

Bret Bender

Candidate Home Address:

Home Address: [redacted]

Accepted and agreed:

Ascend Wellness Holdings, Inc.

1411 Broadway, 16th Floor
New York, NY 10018

Date: 4/27/2022 | 6:16 PM EDT

MassGrow, LLC & Mass Mgmt Grp, LLC

DocuSigned by:

By: [redacted]

Name: [redacted]

Title: VP, Talent Acquisition

EXHIBIT A

None.

Exhibit 10

Statement of Earnings For:	Bret Bender							AWH Mgmt Grp LLC
Employee #: [redacted]	Location	Manhattan	Period Begin:	8/1/2022	Check Date:	8/19/2022		1411 Broadway 16th FL
Clock Number:	Department	D0015	Period End:	8/14/2022	Pay Type:	Salary		New York, NY 10018
Company Id: [redacted]	Federal Filing:	Single or	Exemptions:		Additional Tax:			
	State Filing:		Exemptions:	0	Additional Tax:			

Voucher Id	Check Amount	Gross Pay	Net Pay	Check Message
[redacted]	$0.00	$7,307.70	$4,733.87	

EARNINGS *Not included in Totals ^Hrs/Units = Units (Units not included in Totals)

Description	Rate	Hrs/Units	Dollars	YTD Hrs/Unit	YTD Dollars
Salary Autopaid	91.3463	80.00	7,307.70	432.00	39,461.58
[redacted]			[redacted]	[redacted]	[redacted]
Total:		80.00	7,307.70	432.00	39,461.58

TAXES

Description	Current	YTD
[redacted]	[redacted]	[redacted]
Total:	[redacted]	[redacted]

DEDUCTIONS

Description	Current	YTD
[redacted]	[redacted]	[redacted]
Total:	[redacted]	[redacted]

CURRENT PERIOD LEAVE ACCRUAL

DISTRIBUTION OF NET PAY

Checking	Account: [redacted]	Deposit Amount: [redacted]

AWH Mgmt Grp LLC
1411 Broadway 16th FL
New York, NY 10018

CHECK DATE	VOUCHER ID
8/19/2022	[redacted]

TOTAL NET PAY
[redacted]

100310 Manhattan D0015

Bret Bender

[redacted]

NOT NEGOTIABLE

000088

BEN-RD-CT-0147

Exhibit 11

JOB DESCRIPTION

JOB TITLE	**VP, COMPLIANCE**		
DEPARTMENT	**LEGAL/COMPLIANCE**		
REPORTS TO	**Chief Compliance Officer**	**DIRECT REPORTS**	
CREATED BY	[redacted]	**LAST UPDATED**	**07/15/21**

JOB SUMMARY: The VP of Compliance will manage and maintain compliance priorities for multiple state assets which include operational and regulatory deadlines. As a Juris Doctorate holder, the ideal candidate will have a familiarity with the cannabis sector or has experience within a heavily regulated environment. Ideally the candidate will be inspired by a fast-paced culture and have a high level of comfort in ownership of state Compliance.

PRIMARY RESPONSIBILITES

- Responsible for all applicable state, county and municipal laws, ordinances and regulations, including the specific cannabis regulations for that state
- Reviews and interprets state regulations
- Serves as subject matter expert on current and prospective state cannabis regulations and provides compliance advice to internal team
- Completes the application process for entering new markets by drafting and editing license applications
- Submits applications for registration renewals to maintain state licensures
- Works cross functionally with internal teams including Operational team and Real Estate and Facilities team to draft variance requests and operational deadline extension requests
- Prepares and submits documentation required for regulatory inspections and coordinates the inspection process for internal departments and state regulators
- Works cross-functionally with marketing to review collateral to ensure compliance with state regulations
- Investigates and resolves compliance concerns, issues, or violations
- Keeps informed of emerging cannabis regulatory issues, trends, and other developments
- Travels periodically among the Company's multi-state cultivation and dispensary operations

JOB REQUIREMENTS

- Bachelor's degree required
- Juris Doctorate Degree preferred
- 8 + years of compliance experience
- Knowledge or willingness to learn state specific cannabis laws and regulatory compliance
- Experience in cannabis seed-to-sale software programs required (LeafLogix)
- Must have knowledge of Microsoft office suite, including work excel, outlook, and PowerPoint.
- Treat people with respect, keeps commitments, inspires the trust of others, works with integrity and ethically, upholds organizational values.
- Ability to regularly travel to facilities throughout Midwest and Northeast

PHYSICAL REQUIREMENTS

Drop Down Selection			
1. Sitting	Frequently	18. Lifting	
2. Standing	Occasionally	10 lbs. or less	Occasionally
3. Walking	Occasionally	11 to 25 lbs.	Not Applicable
4. Bending Over	Not Applicable	26 to 50 lbs.	Not Applicable
5. Crawling	Not Applicable	51 to 75 lbs.	Not Applicable
6. Climbing	Not Applicable	76 to 100 lbs.	Not Applicable
7. Reaching Overhead	Not Applicable	Over 100 lbs.	Not Applicable

JOB DESCRIPTION

8. Crouching	Not Applicable	19. Carrying	
9. Kneeling	Not Applicable	10 lbs. or less	Occasionally
10. Balancing	Not Applicable	11 to 25 lbs.	Not Applicable
11. Pushing or pulling	Occasionally	26 to 50 lbs.	Not Applicable
12. Talking	Frequently	51 to 75 lbs.	Not Applicable
13. Repetitive use of hands/arms	Frequently	76 to 100 lbs.	Not Applicable
14. Repetitive use of legs	Not Applicable	Over 100 lbs.	Not Applicable
15. Grasping	Occasionally	20. Hearing	Continuously
16. Eye/Hand Coordination	Not Applicable	21. Visual Acuity	Continuously
17. Fine Manipulation	Not Applicable	22. Subject to Noise	Occasionally

EEO STATEMENT

Ascend Wellness Holdings, LLC and its subsidiaries is an equal opportunity employer and celebrate the population of differences and does not discriminate in its hiring / hiring practices, regardless of race, color, religion, sex, sexual orientation, gender identity, national origin, age, disability, veteran status, or any other characteristic protected by law.

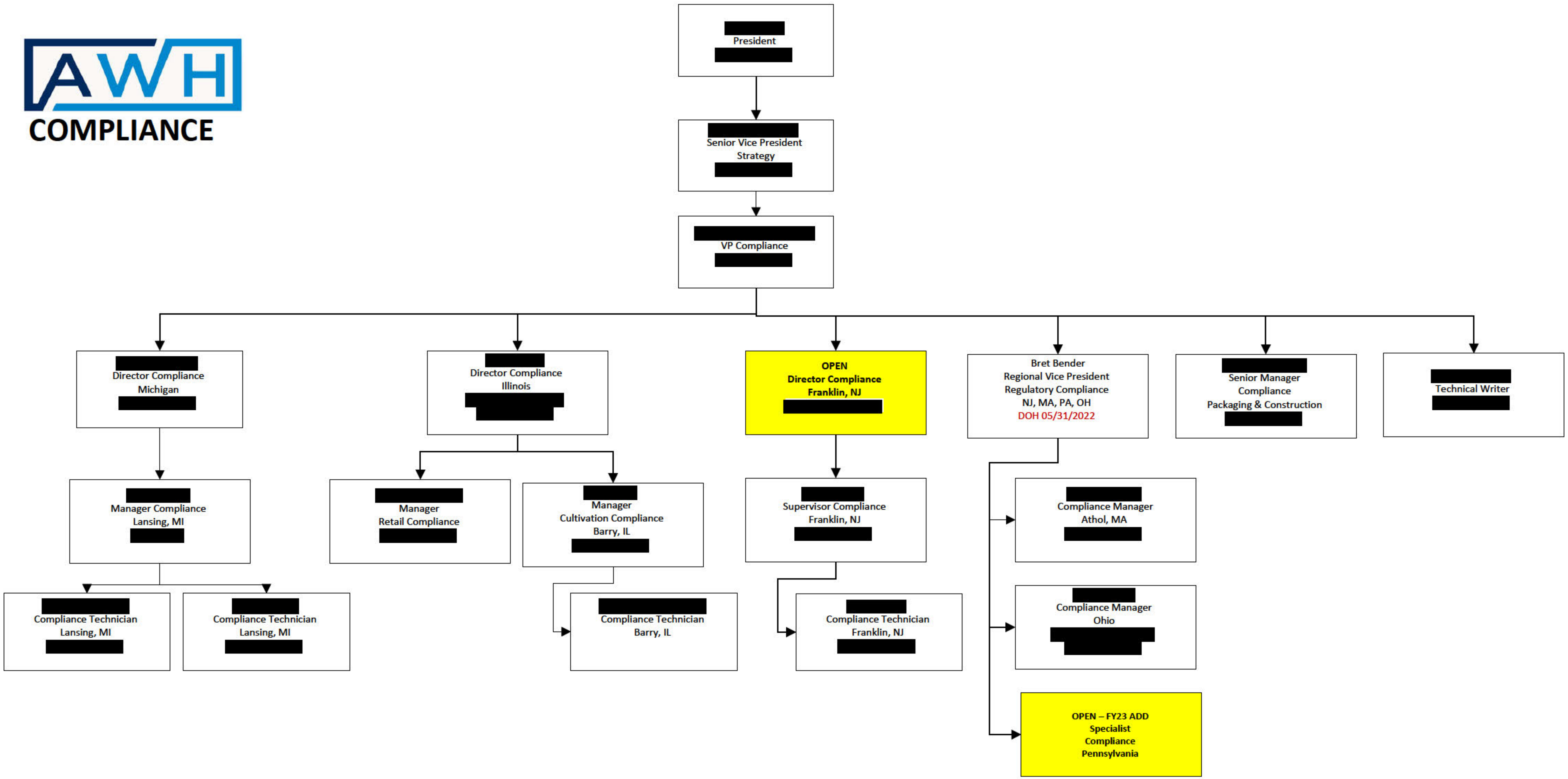
Nothing in this job specification restricts management's right to assign or reassign duties and responsibilities to this job at any time. Critical features of this job are described under various headings above. They may be subject to change at any time due to reasonable accommodation or other reasons. The above statements are strictly intended to describe the general nature and level of the work being performed. They are not intended to be construed as a complete list of all responsibilities, duties, and skills required of employees in this position.

This job description in no way states or implies that these are the only duties to be performed by the employee(s) incumbent in this position. Employees will be required to follow any other job-related instructions and to perform any other job-related duties requested by any person authorized to give instructions or assignments. All duties and responsibilities are essential functions and requirements and are subject to possible modification to reasonably accommodate individuals with disabilities.

To perform this job successfully, the incumbents will possess the skills, aptitudes, and abilities to perform each duty proficiently. Some requirements may exclude individuals who pose a direct threat or significant risk to the health or safety of themselves or others. The requirements listed in this document are the minimum levels of knowledge, skills, or abilities. This document does not create an employment contract, implied or otherwise, other than an "at will" relationship.

HR USE ONLY			
Pay Grade		Effective Date	
Job Code		Exemption Status	Exempt
Workers Comp Code	8017	Exemption Duties	Choose from drop down

AWH COMPLIANCE



<u>Legend</u>
[redacted]

Contact Information

[redacted]

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

SUSAN HALING, in her official capacity as EXECUTIVE INSPECTOR GENERAL for the AGENCIES OF THE GOVERNOR, State of Illinois,	)	
Petitioner,	)	
v.	)	No. 24-EEC-002
BRETT BENDER,	)	
Respondent.	)	

NOTICE OF FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on December 6, 2024, I caused **Respondent's Unopposed Statement of Mitigation** to be filed with the Executive Ethics Commission of the State of Illinois, a copy of which is hereby served upon you.

Respectfully submitted,

/s/ Brian C. Prendergast
Attorney for Respondent

Croke, Fairchild, Duarte & Beres
191 N. Wacker Dr., 31st Floor
Chicago, Illinois 60606
[redacted]@crokefairchild.com

CERTIFCATE OF SERVICE

The undersigned attorney certifies that on December 6, 2024, he caused copies of the attached **Notice of Filing** and **Respondent's Unopposed Statement of Mitigation** to be delivered by electronic mail to the persons identified on the attached Service List.

/s/ Brian C. Prendergast
Brian C. Prendergast

SERVICE LIST

Jason D. Sweat
Administrative Law Judge
Executive Ethics Commission
Stratton Building
401 South Spring Street, Room 515
Springfield, Illinois 62706
[redacted]@illinois.gov

Elizabeth Morris
Emily Hirsch
Special Litigation Bureau
Office of the Illinois Attorney General
115 South LaSalle St., 35th Fl.
Chicago, IL 60603
[redacted]@ilag.gov
[redacted]@ilag.gov

Neil P. Olson
General Counsel
Ethics Officer | FOIA Officer
Office of Executive Inspector General
for the Agencies of the Illinois Governor
607 East Adams, 14th Floor
Springfield, Illinois 62701
[redacted] (Springfield office)
[redacted] (Chicago office)
[redacted] (mobile)
[redacted]@illinois.gov

Haley Stratton | Paralegal
Executive Ethics Commission | William G. Stratton Building
401 South Spring Street, Suite 513 |
Springfield, Illinois 62706
Telephone: [redacted]
[redacted]@illinois.gov

**IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS**

SUSAN HALING, in her official capacity as Executive Inspector General for the Agencies of the Illinois Governor, Petitioner, v. BRET BENDER, Respondent.	No. 24-EEC-002

RESPONDENT'S VERIFIED UNOPPOSED STATEMENT OF MITIGATION

Respondent Bret Bender ("Bender"), formerly Deputy Director of Cannabis Control at the Illinois Department of Financial and Professional Regulation ("IDFPR"), by and through his counsel, Croke Fairchild Duarte & Beres, respectfully submits this Unopposed Statement of Mitigation. Petitioner has agreed not to contest or otherwise challenge this mitigation statement, which Petitioner had an opportunity to review prior to filing.

INTRODUCTION

As set forth herein, Bender has a significant history in government services and is particularly committed to the formulation and implementation of sound public policy. He did not use his position in state government as a steppingstone to a pay day; nor did he even seek out positions in the private sector. In fact, Bender was reluctant to leave government services, as he thoroughly enjoyed having a meaningful role in crafting laws and other policies that impact people's lives. Nor is there any evidence (or even an accusation) that Bender did anything improper while at IDFPR that favored his future employer, Ascend. Indeed, during Bender's entire tenure in government services, including his time at IDFPR, Bender was never disciplined or cited for misconduct, including but not limited to any violation of the Ethics Act.

Further, while Bender admits he failed to comply with Section 5-45(b) of the Ethics Act by working for Ascend without waiting the requisite twelve-month revolving door period, he did so without any ill or malicious intent. In fact, the uncontroverted evidence shows that Bender told Ascend he could have no immediate involvement in Illinois on behalf of Ascend due to the Ethics Act, and he provided no services to Ascend – directly or indirectly – that related to Ascend's Illinois operations. Instead, he worked for Ascend in other geographic regions, separate and apart from Illinois.

Through this verified Statement of Mitigation, Bender respectfully seeks a fair and just determination of any penalty that may be assessed for having joined Ascend's workforce within the first year following his departure from his employment with the State of Illinois.

UNDISPUTED FACTS IN SUPPORT OF MITIGATION

Bender's career in public service:

Long before he worked for the IDFPR, Bender had strong dedication to, and an established career in, public service.

Bender first developed an appreciation for government service while studying journalism at the University of Missouri-Columbia. Among other things, in 2004, he was tasked with reporting on the Missouri Secretary of State's election, which centered on two principal issues: (1) whether voters should be required to show a photo ID before voting and (2) a ballot measure seeking to adopt an amendment to the Missouri Constitution that would ban gay marriage. Bender's career trajectory was substantially affected by his involvement in this election, as it truly opened his eyes to the genuine impact government can often have on people's lives. Rather than continue his journalism career, Bender focused on public policy positions with the hope that he could contribute to important matters such as the right to vote and the freedom to marry the person you love.

Despite already working two jobs his senior year at University of Missouri-Columbia, Bender accepted a communications internship with the newly elected Secretary of State to further his goals. Bender then worked with the Missouri Democratic Party for the 2006 election cycle, and ultimately accepted a job paying just $21,000 a year to work as a legislative aide/communications assistant in the Missouri House of Representatives. He was an attractive job candidate at the time. He graduated cum laude, with honors and two baccalaureates, and he had an extensive work history, including serving in a managerial role at a tutoring organization (a position he had held since his sophomore year). While there were other opportunities that he could have pursued, Bender was attracted to the legislative position (despite its relatively low salary) in part because he wanted to learn more about how the legislative process worked. During his two years working in Missouri's legislature, he quickly recognized that lawyers in the state capital played the largest role in shaping policy – a fact that greatly contributed to his decision to apply to law school.

Bender attended DePaul School of Law in Chicago. He had targeted various Chicago law schools so that he could be closer to his family (he is originally from Downers Grove, Illinois) and because he wanted to seek a position with the State of Illinois after graduating law school. Indeed, from the time Bender arrived at DePaul, he shaped his curriculum around courses that would assist in a future job in government, including taking elective courses in Administrative Law, State Constitutional Law, Legislative Drafting, Legislative Process, Public Sector Union Law, and State and Local Government Law. He also became involved in various public policy extracurriculars. He volunteered for the Citizens Advocacy Center, a non-profit that helps residents navigate challenges with their local governmental bodies. He also interned at the Attorney General's Public Access Counselor's Office, and even extended his summer internship by an additional three months after his program was complete. And during his third year of law school, he interned with

Klein, Thorpe, and Jenkins, Ltd ("KTJ"), a municipal law firm based in Chicago, where he wrote ordinance amendments and researched municipal law issues.

In fact, Bender's affinity for government work was so apparent that, without even informing him, Bender's State and Local Government Law professor recommended him for a job with [redacted] then General Counsel for the Illinois Speaker of the House. The General Counsel oversees the Speaker's Technical Review Unit, which writes and analyzes legislation for House Democrats in Springfield. It was a dream job for Bender. Among other things, he went on to help author the 2013 Compassionate Use of Medical Cannabis Pilot Program Act, thus beginning his involvement with cannabis policy. Further, although technical review attorneys in the General Counsel's office work on six-month contracts (that are not automatically renewed), Bender was welcomed back on four occasions, serving out five six-month contracts.

At that time, Bender needed a full-time position with benefits, so he moved into the private sector for several years, simultaneously managing a marijuana cultivator and a dispensary. But Bender was always looking for ways to be involved in public policy work, and when the Marijuana Policy Project ("MPP") created a new Illinois Political Director position, Bender targeted that position so he could contribute to formulating better cannabis policies (and, hopefully, as an avenue to transition back to government work). Notably, Bender took a considerable pay cut (roughly $20,000 in annual compensation) to accept this role. Unfortunately, Bender's time was cut short at the MPP, as turmoil at the top of the organization led to a loss of funding, and Bender's position was eliminated within four months of his hire. After working odd jobs to make ends meet, Bender came upon the opportunity to work with the new Pritzker administration in early 2019, focusing on enacting legislation to allow and regulate the sale of cannabis to any person aged 21 or older. Although his official hiring wasn't until April 16, 2019, Bender was so attracted by the opportunity that he worked the first two weeks of April without pay, spending his own money for interim travel and lodging in Springfield.

As Deputy Director of the Medical Cannabis Section at IDFPR, Bender worked tirelessly to help develop the recreational marijuana legislation, and then to implement it. This involved overseeing the regulation of medical cannabis dispensaries, while also creating (1) an application process for Responsible Vendors (a new license type for companies tasked with training dispensary workers), (2) an application process for current licensees to obtain adult use licenses at their current medical dispensary locations (which had to be completed before January 1, 2020), (3) an application process for current licensees to obtain an adult use license at an additional retail location, and (4) an application process to award 75 new dispensary licenses (which had to be ready by October 1, 2019). The first three application processes listed were created and graded nearly entirely by Bender, with review by the Department's legal unit. Bender worked so many extra hours to get these application processes off the ground that, by September 2019 (roughly six months into the job), he had accrued more than three months of compensation time and was forced to take a day off (as the state limits how much compensation time an employee can accrue). Bender was not asked to dedicate this sort of time to launching the program, but he did so because he was excited to be part of such an effort and to get back into lawmaking and policy decisions. During his tenure, Bender also wrote multiple new administrative rule packets in an attempt to modernize the state's cannabis program, which hadn't seen a major rule update since the original rules were written in 2014.[1]

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[1] None of the rule amendments Bender drafted were legally adopted during his time at the state. One rule packet, regarding the operations of Responsible Vendors, was adopted on an emergency basis, though a court later determined the state did not have emergency authority. But Responsible Vendor rules later adopted in the state of Massachusetts, at the onset of that state's Responsible Vendor program, were nearly identical to the rules Bender had drafted.

In December 2019, Bender was reassigned as the Deputy Director of Cannabis Control at IDFPR. He continued in this role until his resignation from state employment, effective May 20, 2022. Truth be told, Bender found this position less satisfying because he was more in an oversight/regulatory role, as opposed to a policymaking role. He was increasingly frustrated by his substantially reduced role in formulating cannabis policy for the state.[2] Nonetheless, Bender continued to perform the work that was assigned to him and to do it well. During his tenure in the legislative branch and throughout his time at IDFPR, Bender was never disciplined or cited for misconduct, including without limitation any violation of the Ethics Act.

Bender is approached by Ascend:

In the Winter of 2021, Bender was hoping he would be considered as the next Cannabis Regulation Oversight Officer (CROO), in the event the post be vacated by the current CROO. However, despite having the requisite experience drafting cannabis legislation, working in the industry, and regulating the industry, Bender was told he would not be a likely candidate for this position. Knowing that he was not going to be considered for the policy making position he desired in Illinois, he began to explore the idea of moving elsewhere and looking for opportunities in government positions in other jurisdictions. As he was doing so, he was connected with Ascend Wellness Holdings, Inc. ("AWH" or "Ascend"), a cannabis operator based in New York City, about a potential role in the company. Significantly, Bender did not seek out this opportunity out and was not actively exploring opportunities in the private sector when he was approached by

[2] Bender's frustration actually resulted in him (somewhat spontaneously) applying for a position on park district board in his hometown after no one filed petitions to run for an open seat. Seeing this as an opportunity to fulfill his desire to positively impact his community, Bender ran as a write-in candidate in February 2021, won the seat, and has served on the board since. Bender was re-elected in 2023 and plans to continue serving on the board as he very much enjoys the positive impact he can have on others' lives in this role.

Ascend. He had no prior relationship with Ascend's corporate leadership and had been put in touch by a third party.

Ascend operates numerous subsidiaries nationwide, including Illinois. Bender had some limited interactions with Ascend's Illinois dispensaries in his role at IDFPR. Specifically:

a. Bender was involved in an inspection of an Ascend Illinois dispensary conducted on December 7, 2021. In response to concerns raised to him by the inspector, Bender reviewed photos sent by the inspector and researched a potential building code issue with the dispensary's facilities, including a determination that because the property was likely not compliant with the building code, the dispensary's floor remodel plan should not be approved by IDFPR. Ultimately, five violations were found and total fees of $3,750 were assessed as a result of this dispensary inspection;

b. Bender reviewed an inspection of an Ascend Illinois dispensary conducted on January 21, 2022. Bender reviewed the report for errors and to ensure that the report was clearly written by the inspector and signed it on March 12, 2022 in a section labeled "Supervisor's review and date";

c. Bender reviewed an inspection of an Ascend Illinois dispensary conducted on April 8, 2022. Bender reviewed the inspection report and signed it on April 30, 2022, in a section labeled "IDFPR Supervisor/Lead Investigator"; and

d. Bender oversaw and supervised the inspection of a dispensary conducted on April 11, 2022, that was in the process of being purchased by an Ascend subsidiary. Respondent was on site as the IDFPR supervisor of the inspection, and he participated in the inventory count. The purpose of this inventory count was to ensure that any infractions or inventory issues related to the prior owner, HealthCentral Illinois, LLC, were properly documented prior to Ascend taking over the facility.

With respect to the inspections described in subparts (b) and (c) *supra*, Bender played no active, let alone substantial role, in these inspections. Bender simply reviewed inspection reports well after the inspection had occurred for written style and made no substantive changes to the reports. *See* BEN-RD-CT-0208, 209.[3] Further, the December 7 inspection resulted in an adverse ruling against Ascend. And, as noted, the April 11 inspection concerned the prior operator's

[3]The commission has previously viewed administrative review of this nature as not constituting substantial participation. *See In re Mayville*, No. 14-EEC-010; *In re Wagle*, No. 13-EEC-004.

liability, as Ascend had not yet taken over the dispensary. In short, there isn't a scintilla of evidence that Bender showed any favor towards Ascend's facility or that any of the above-listed inspections were not properly conducted.

Bender was admittedly aware of state ethics laws in general. In fact, in the spring of 2022, when Ascend contacted Bender to initiate conversations regarding a possible future "role" at Ascend, Bender did not divert his attention from IDFPR to have these discussions, and did not otherwise communicate with Ascend representatives on "state time." Indeed, very early in these discussions, he texted Ascend representatives: "Sorry for the slow reply, but ethics laws prevent me from engaging in these talks on state time and an endless stream of phone calls this morning prohibited me from going off state time until just now." *See* Exhibit A. Bender had also been made aware of revolving door prohibitions of the Ethics Act in various mandated trainings and other materials, which he has acknowledged receiving.

And when Bender started talking with Ascend, he never intended to fail to comply with the one-year revolving door prohibition, and immediately made clear that he could not have any involvement with Ascend's operations in Illinois. Given that Ascend is a national cannabis operator, Bender could have been assigned to an Ascend subsidiary not operating in Illinois while complying with the revolving door policy. This possibility was attractive to Bender because it could provide him an opportunity to get acquainted with cannabis policies in other states and potentially lead to government positions in a different state where he could continue his career in public service.

Ultimately, Bender was offered (and accepted) the position of Regional Vice President in Regulatory Compliance. Illinois was not among the various states that Bender oversaw in this role. Rather, Bender had responsibilities in Michigan, Ohio, Pennsylvania, Maryland, and Massachusetts. During the one year following his departure from IDFPR, Bender did not work on any matters for Ascend that involved any of its subsidiaries operating in Illinois. He also instructed his co-workers not to discuss Illinois-related matters with him during this period. There is no evidence in the record that this directive was not followed or that Bender performed any work on behalf of Ascend in Illinois.[4]

Bender Ascend compensation during the prohibited employment period:

In his role at IDFPR, Bender made an annual salary of $ $140,645.96. For the applicable prohibited employment period of May 21, 2022 through May 20, 2023, Ascend paid Bender $178,746 in salary and $19,494 in discretionary bonuses. Bender also received certain grants as part of Ascend's Long Term Incentive Program ("LTIP"). Bender's offer letter from Ascend indicates that he will be eligible for a "*one-time* equity grant targeted at 30% of [his] base salary prorated based on [his] date of hire." (Emphasis added). The offer letter also provided that Bender's equity grant "will be in the form of restricted stock units and stock options and will be issued following your date of hire." Bender received this grant on August 3, 2022, comprised of 13,344 restricted stock units ("RSUs") and 11,438 "stock options" at a grant price of $2.99/share, which Ascend collectively valued at $53,623 (*i.e.*, 30% of Bender's 178,746.34).[5]

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[4] In November 2023 – *i.e.*, after the prohibited employment period – Ascend changed its approach to compliance matters, now assigning employees to focus either on the cultivation side or retail side of the cannabis industry, rather than by geography. Thus, Bender now works on some matters in Illinois, but does so on the cultivation side of Ascend's compliance team, which is regulated not by IDFPR, but by the IDOA. Significantly, Bender's current role would not have been prohibited employment under the Ethics Act since he did not have any regulatory role within the IDOA in his prior position.

[5] It is not entirely clear how this value is calculated. The parties have sought further clarification from Ascend, but due to turnover at the company in the last month, the parties have not received sufficient clarification as of the filing of their respective pleadings. To the extent additional information is provided by Ascend, the parties have contemplated potentially filing supplemental submissions on this subject. Bender also received a second LTIP award that Ascend valued at $53,623 on May 16, 2023. The parties are seeking further clarification as to why Bender received this second LTIP award and whether it applies to services provided between May 21, 2022 and May 20, 2023. To be clear, however, Bender's offer letter from Ascend only discusses his eligibility for a "one-time" LTIP award.

However, it is not as if Bender received an additional $53,623 cash in hand (or marketable securities that he could immediately, or even to this date, sell). Bender's LTIP award vests over a four-year period (the latter three of which are outside the prohibited employment period). Further, Ascend's documentation about its LTIP makes clear that the RSU grant "represents a promise by the company to transfer a share of the company's stock at a specific time in the future. The holder of an RSU is not the beneficial owner of the shares underlying the RSU award and therefore is not entitled to voting, dividend, or other stockholder rights unless and until shares are delivered *upon vesting of the award*." *See* Exhibit B (emphasis added). Additionally, the "stock options" are "a type of equity-based compensation granted by companies to their employees and directors. *Once vested*, these awards provide employees with *the right to buy the company's stock at a specified price* for a finite period of time. *See* Exhibit B (emphasis added). Ascend's LTIP summary is clear that "Vesting terms outline a period over which you have to remain in the Company's service to obtain full ownership rights and benefits of the award, or some portion of it. If you leave the Company, *any unvested units will be forfeited*. … Nothing in the Plan, or in any award granted under the Plan, provides any person with the right to remain in our service for any specified period." *See* Exhibit B (emphasis added). For this reason, RSUs "generally become taxable on the vesting date, subject to tax withholdings in the same manner as ordinary income. The taxable income will be based on the number of shares vesting and the price per share on the date of vesting." *See* Exhibit B.

While Ascend has valued the LTIP grant to Bender at $53,623 (*i.e.* 30% of his annual salary amount), this value is dubious for numerous reasons. First, as explained *supra*, the LTIP grant vests over a four-year period and any unvested amounts would be forfeited. With respect to the RSUs granted, Bender is not the beneficial owner of these RSUs, and they are not part of his taxable income until that vesting occurs, most of which falls outside of the post-employment restricted period. Additionally, with respect to any stock options included in the LTIP grant, this only entitles Bender to purchase shares of stock at the grant price at the time of vesting (in the case of the August 3, 2022 LTIP award, the grant price was $2.99). Significantly, around August of 2023 (at the time the first 25% of the LTIP award would have vested), the price of Ascend's stock was only about $0.61:

See [Ascend Wellness Holdings, Inc. (AAWH) Stock Price, News, Quote & History - Yahoo Finance](https://finance.yahoo.com/quote/AAWH).[6] In other words, Bender's RSU's that vested in August of 2023 (25% of the 11,438 RSUs he was granted) were worth roughly $1,750 at that time. And at present, Ascend's stock is trading at an even lower price ($0.44), meaning these shares are worth even less now. Additionally, because the grant price of his stock options ($2.99) exceeds the price of the stock at the time these options vested, Bender would actually lose money by exercising these options. To state it differently, these stock options are effectively worthless. While Bender acknowledges that the price of stocks fluctuates, the five-year trend of Ascend's stock price suggest that Ascend's valuation of this LTIP award (even once

[6] https://finance.yahoo.com/quote/AAWH

it is fully vested) is severely misleading and does not appear to represent the actual compensation Bender may receive as a result of the LTIP grant.

Bender's cooperation and other mitigating factors:

There is also no evidence that Bender participated in a scheme of Ethics Act violations, took premeditated actions to violate the Ethics Act, involved anyone else at IDFPR in any alleged violation of the Ethics Act, or has any prior record of discipline or Ethics Act violations. Rather, Bender's offense amounts to accepting employment that he believed did not (but which actually did) violate the Ethics Act. Upon this action being brought, Bender cooperated fully in OEIG's investigation into this matter, including sitting for an interview with the Office of the Executive Inspector General, coordinating with Ascend to accurately calculate any compensation he received that is applicable to the prohibited employment period, working for months through counsel on a joint stipulation of facts, and agreeing not to oppose Petitioner's summary judgment filing to conserve state resources.

ARGUMENT

I. Mitigating factors under Illinois Administrative Code Section § 1620.530 weigh strongly in favor of a limited penalty against Bender.

The circumstances of this case – including the presence of mitigating factors and the absence of any aggravating factors – weigh heavily in favor of a limited penalty, if any, to be imposed against Bender.

Under the Illinois Administrative Code, "[w]hen the Commission is determining an appropriate fine pursuant to either Section 20-90(d) or 50-5 of the Act after a finding of liability, the Commission may consider the following mitigating and aggravating factors:

1) nature of violations;
2) the scope of the violation or scheme of violations;
3) the use of title or position;
4) the extent of the use of resources, money, time to the State;

5) the extent of a respondent's intent or knowledge of the facts surrounding the violation;
6) premeditation;
7) the duration of any series of violations;
8) position of authority;
9) involvement of others, especially other State employees;
10) impact on an ongoing investigation or the operations of government;
11) any impact statement submitted by a 20-63 Complainant;
12) self-disclosure;
13) cooperation;
14) in the absences of substantial aggravating factors, a self-employed person's incidental business or employment matters that are not reported under Section 5-45(f) of the Act in a timely manner or involve subject matter not directly related to prior State employment and that entail monetary amounts of less than $5,000 are deemed to be offenses warranting a warning or minimal fine;
15) prior disciplinary record or Ethics Act violation; and
16) years of service and type of service with the State.

Here, Bender was previously a longtime, dedicated government employee with no prior discipline record. He did not use his position at IDFPR to market himself for future employment, including the position he ultimately accepted at Ascend. Rather, he was approached by Ascend and only pursued that opportunity because he felt his career had stalled due to no fault of his own, and hoped the opportunity with Ascend would lead to new opportunities in public service in other geographic regions. Thus, at its core, the nature of the violation is that Bender accepted employment with Ascend within one year of his employment with IDFPR. Nothing more.

There is no accusation (let alone evidence) that there was anything underhanded about Bender's involvement with Ascend. For instance, there is no evidence that Bender's potential or actual employment by Ascend influenced any decisions he or IDFPR made during his employment with IDFPR, or that he or the IDFPR gave Ascend any special or favorable treatment. Nor is there any evidence that his employment at Ascend has had any ongoing effect on any IDFPR regulatory or licensing decisions after he left IDFPR. Nor is there any evidence he gave Ascend any insight into IDFPR's operations such that it would have an advantage over competitors. Indeed, the evidence is clear that Bender informed Ascend that he could not work on or advise on any Illinois related matters due to the Ethics Act.

Further, as noted, Bender did not intentionally fail to comply with Section 5-45 of the Ethics Act. Ascend operates subsidiaries that are not in Illinois and Bender's employment with these non-Illinois subsidiaries would not have implicated the revolving door prohibition. There is also no evidence that Bender participated in a scheme of Ethics Act violations, took premeditated actions to violate the Ethics Act, involved anyone else at IDFPR in any alleged violation of the Ethics Act, or has any prior record of discipline or Ethics Act violations.

And when he was called to account for his actions, Bender cooperated fully in Office of the Executive Inspector General's investigation into this matter, including participating in an interview and providing any other discovery that was requested of him. He and his counsel then worked for months with Petitioner on a joint stipulation of facts, including passing draft stipulations between counsel for the parties and conducting numerous conferences between counsel over an extended period. Bender also agreed not to oppose Petitioner's summary judgment motion, provided he was allowed to file a mitigation statement explaining his actions.

II. The Commission's recent precedent provides guidance for Bender's case.

Bender acknowledges that he failed to comply with Section 5-45(b) of the Ethics Act, but, as detailed *supra,* there are substantial mitigating factors that weigh against imposing any significant penalty against Bender for having joined Ascend's workforce within the first year following his departure from his employment with the State of Illinois.

The Commission's recent decision in *Haling v. Thomas Smith*, 21-EEC-004 is instructive here. In *Smith*¸ the Respondent likewise agreed to summary judgment after violating the Ethics Act, and then submitted a Verified Mitigation Statement seeking leniency from the Commission. Among other things, the Commission observed that, while Respondent had been an Illinois State employee for little more than three years, he had been in public service for 17 years before that, including six years in the U.S. Marine Corps. and 11 years serving the education community in Missouri. The Commission further observed that Respondent forthrightly admitted that he violated the Ethics Act and cooperated fully with the OEIG's investigation, saving the State resources. Respondent violation was also not intentional, and there was no evidence that he took any action in favor of his future employer that was "intended to advance his job prospects[.]" Accordingly, the Commission found that the violations were not premeditated, did not involve any other State employees, were of brief duration, and were not vast in scope. Finally, the Commission noted that there was no evidence of any prior disciplinary action or Ethics Act violations that was presented. Accordingly, the Commission fined Smith only $11,331.

Bender acknowledges that, but for his resignation from IDFPR and his subsequent employment with Ascend, he would have made approximately $57,594.04 less in salary and bonuses.[7] Additionally, he would not have received the LTIP grant on August 3, 2022 (although, as noted *supra*, the "value" of that LTIP award is debatable based on its vesting structure and Ascend's historic and current stock price). But, like Smith, there are numerous mitigating factors that weigh against enforcing any significant penalty here.

Bender similarly has a documented history of dedication to public service. In the State of Illinois, he worked in the legislative branch for over two and a half years and at IDFPR from April of 2019 through May of 2022. He made significant contributions to the state during this period, including authoring key pieces of legislation. Prior to law school, he also worked for two years in Missouri's legislature and, prior to that, worked in various internships and other positions for the Missouri Secretary of State and the Democratic Party. Indeed, Bender is so interested in public

[7] As noted, Bender's salary and bonus compensation at Ascend for the prohibited period was $198,240 ($178,746 in salary and $19,494 in discretionary bonuses), while his existing IDFPR annual salary at the time he resigned was $140,645.96.

policy work, that he ran for the open park district board position in his hometown in 2021, and successfully sought reelection in 2023. In fact, one of his biggest worries about this proceeding is that any violation of the Ethics Act may make it more difficult for him to serve in meaningful public policy roles in the future.

Moreover, as in *Smith*, there is also no evidence that Bender's limited interactions with Ascend while at IDFPR were in anyway connected to his subsequent employment with Ascend. Indeed, the one inspection that actually involved a current Ascend dispensary in which Bender substantially participated (*i.e.* the December 7 inspection), there was a finding *against Ascend*. Nor is there other evidence that his violation was premeditated, or that Bender involved other employees in the violation. Rather, Bender was approached by Ascend, a national operator that had many subsidiaries outside of Illinois that would not have implicated the revolving door prohibitions of the Ethics Act. And while he ultimately provided services to Ascend (the parent company), and thus did not fully comply with Section 5-45(b), he did not provide any services or advice with respect to its Illinois operations. Moreover, this is also the only blemish on Bender's record. He has never been disciplined before, much less cited for misconduct or any other violation of the Ethics Act. By all accounts, he was a hardworking and dedicated state employee, who was dedicated to policy work and often went above and beyond his normal job responsibilities.

Lastly, Bender has fully cooperated in the investigation into these matters and has taken responsibility for his actions. He agreed to jointly stipulate to a violation of the Ethics Act and he and his counsel worked with Petitioner to that end. When Petitioner wanted instead to file an unopposed motion for summary judgment, he likewise obliged subject to mitigating consideration. Accordingly, like *Smith*, he has made considerable efforts to save the State resources in this proceeding.

RELIEF REQUESTED

WHEREFORE, Respondent Bret Bender respectfully request that the Commission review and consider the aforementioned evidence of mitigation and enter an order consistent with the nature of the violations.

Dated: December 6, 2024

Respectfully Submitted,

/s/ Richard J. Prendergast

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VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth herein are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ Bret Bender
Bret Bender

EXHIBIT A

10:32 5G

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BB

Bret

iMessage
Tue, Mar 22, 10:16 AM

Hi Bret, this is [redacted], [redacted] sent me your contact info regarding a role at AWH. Would you have time to connect this week?

Tue, Mar 22, 1:50 PM

Sorry for the slow reply, but ethics laws prevent me from engaging in these talks on state time and an endless stream of phone calls this morning prohibited me from morning prohibited me from going off state time until just now.

I have a bit of an odd schedule this week as I have inventory counts at dispensaries the next two mornings and it's difficult to estimate when they will conclude. Plus, both start at 7:30, so my morning routine is

Subject

iMessage

Cash

10:33

5G

79

BB

Bret

Sorry for the slow reply, but ethics laws prevent me from engaging in these talks on

BEN-RD-CT-0061

state time and an endless stream of phone calls this morning prohibited me from going off state time until just now.

I have a bit of an odd schedule this week as I have inventory counts at dispensaries the next two mornings and it's difficult to estimate when they will conclude. Plus, both start at 7:30, so my morning routine is a little harder to manage than my usual 8:30 start time.

I could do any day at 5 pm CDT or later or Friday before 8:30 central or during midday (my lunch timing is usually more flexible than it was today). Or, I have the next hour free until 1:45 CDT.

Subject

iMessage

EXHIBIT B

TO: Ascend Wellness Holdings, Inc. 2021 Stock Incentive Plan Participants

FROM: AWH Accounting

RE: AWH 2021 Stock Incentive Plan FAQ

March 2022

This below answers to frequently asked questions address material terms, rights, and benefits of the Ascend Wellness Holdings ("AWH" or the "Company") 2021 Stock Incentive Plan ("the Plan"). This document is intended to be a summary. Some rules are described in abbreviated form, and others are not mentioned at all. If there is any ambiguity in this summary or if there is any conflict between this summary and the Plan, then the Plan text (including your individual award agreement) will govern.

Please be advised that the information enclosed with this FAQ is confidential. Do not reproduce this information or disclose or disseminate such information to any other person. Failure to keep this information confidential will constitute a violation of your confidentiality obligations to the Company, and could result in adverse action by the Company, including but not limited to termination of your employment or service, and/or legal action against you.

The information below is provided for general purposes only and is not intended to provide any tax or financial advice. Please consult your own financial and tax advisors before accepting such awards.

1. What is the 2021 Stock Incentive Plan?

The Company' s equity-based awards such as the restricted stock units (the "RSUs") and stock options ("SOs") are granted pursuant to the rules of the Plan. The Plan was adopted by the Company and the board of directors to provide its employees, directors and consultants with an opportunity participate in the success of the Company through ownership of the Company' s Stock. It is important to read and understand the terms of the Plan and the applicable award agreement included in your equity award package.

2. What is an RSU?

Restricted Stock Unit is a type of equity-based compensation award granted by a Company to an employees and director in exchange for services for the Company. An RSU represents a promise by the company to transfer a share of the company's stock at a specific time in the future. The holder of an RSU is not the beneficial owner of the shares underlying the RSU award and therefore is not entitled to voting, dividend, or other stockholder rights unless and until shares are delivered upon vesting of the award.

3. What is a Stock Option?

The employee stock option ("SO") award is a type of equity-based compensation granted by companies to their employees and directors. Once vested, these awards provide employees with the right to buy the company's stock at a specified price for a finite period of time.

4. What is Global Shares?

Global Shares is a cloud-based employee ownership platform, which assists public Companies with managing stock compensation plans for its employees and directors. Upon issuance of your first award, you will be provided with account access. You will need to login to Global Shares as soon as you receive the account opening notification to complete the onboarding application form.

Global Shares also provides brokerage services, which facilitates selling of fully vested AWH stock. This service is optional, and employees are permitted to transfer fully vested shares to a brokerage account of their choice. Such transfer request can be made in Global Shares directly.

5. **I was informed about receiving an equity-based award. What are the next steps?**

Please login to Global Shares review/accept any pending awards.

6. **Is formal acceptance of the grant required? What happens if I don't accept the grant before vesting?**

The participant is not entitled to the benefits of the grant, until all terms and conditions are acknowledged and electronically accepted through Global Shares or, in some cases, DocuSign. If grants are not accepted within a reasonable timeline, the award will expire and may not be re-issued.

7. **What is the vesting schedule?**

RSUs and SOs granted to you may be subject to "vesting". Vesting terms outline a period over which you have to remain in the Company's service to obtain full ownership rights and benefits of the award, or some portion of it. If you leave the Company, any unvested units will be forfeited. Refer to the Global Shares profile page for details regarding your vesting schedule. Nothing in the Plan, or in any award granted under the Plan, provides any person with the right to remain in our service for any specified period.

8. **What would happen to the unvested portion of the grant if I were to die or become disabled?**

In the event of death or disability, any remaining RSUs or SOs, shall vest as of the date of such event.

9. **What would happen to my award in a corporate acquisition or merger?**

If there is a Change in Control while the Participant is still in service, any remaining unvested RSUs or SOs shall vest as of the date of such event.

10. **If AWH pays dividends to shareholders, will I get dividends on my restricted stock units?**

RSU holders are not entitled to dividends.

11. **How are RSUs Taxed**?

Restricted stock units generally become taxable on the vesting date, subject to tax withholdings in the same manner as ordinary income. The taxable income will be based on the number of shares vesting and the price per share on the date of vesting. Shares of the Company's stock will be issued net of tax. The ordinary income and the related tax withholdings will be included with ordinary income on form W-2 at the end of each calendar year.

Subsequent sales of the stock will be treated as capital gains or losses. The tax impact resulting from AWH equity-compensation awards are the responsibility of the grant holders. Please make sure to consult your tax advisors.

12. **What is the Insider Trading Policy and do I have to get permission to sell shares?**

If you are a Corporate employee of AWH, you are required to request pre-authorization for any sales even during the open trading periods. Please submit your request to preclearance@awholdings.com. Responses will generally be provided within 24 to 48 hours.

Please also make sure you i) review the most recent AWH Insider Trading Policy available on PowerDMS, and ii) are not in possession of Material Non-Public Information ("MNPI") at the time of the trade request.

13. **Who should I contact if I have additional questions:**

If you have any questions about your awards or access and use of Global Shares, please contact your local HR representative or the following Global Shares support line: English (US): +1 646 968 0653. 8:00 GMT – 21.00 GMT (GMT+1 during Summer Time) Monday – Friday

Support tickets may also be submitted on the following site: https://awholdings.globalsharesequity.com/en-US/Home/ContactUs

If your issue or question is still not resolved, you may contact equity@awholdings.com.