

## FAQ about outside activities

### What qualifies as an outside activity by a UA employee?

Compensated work for any entity other than UA,<sup>1</sup> or uncompensated work that either involves consulting for or providing other services to non-UA individuals or firms, particularly where those services are similar to one's work for UA; or serving on a board of directors of, or as an officer of, an organization (for-profit or nonprofit).

### Under what circumstances may outside activities be found impermissible?

The chief consideration will be whether the employee's current or proposed outside activities, taken individually or cumulatively, would substantially interfere with the performance of regular UA duties.<sup>2</sup> "[A] public employee's outside employment or service, including volunteer service, is incompatible or in conflict with the proper discharge of official duties if the employee's designated supervisor reasonably determines that the outside employment or service (1) takes time away from the employee's official duties; (2) limits the scope of the employee's official duties; or (3) is otherwise incompatible or in conflict with the proper discharge of the employee's official duties."<sup>3</sup> While factor (3) is open-ended, most issues arise under (1) or (2)

In terms of time, UA uses a standard that "[n]o more than 20 percent of an employee's total professional effort may be directed to such extramural activities."<sup>4</sup> For a full-time employee, this works out to be 10 hours per week.<sup>5</sup> Employees should avoid outside activities requiring a greater time commitment than that, and supervisors should ordinarily not approve requests exceeding that standard unless good cause is shown based on unusual circumstances that make it appropriate, and the supervisor is convinced that the employee's outside activity will not detract from the employee's UA responsibilities. (Approvals can be limited in time, to give the employee and supervisor a chance to re-assess whether the arrangement has successfully avoided substantial interference with UA duties.) Time away from the employee's official duties can also be problematic if the outside activity entails specific time frames that would otherwise fall within the employee's regular UA working hours, necessitating the use of faculty time off or personal leave time by the employee to work on the outside activity,<sup>6</sup> which may become excessive and interfere with the performance of regular UA duties. (Outside activities limited to

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<sup>1</sup> This includes honoraria, but not royalties from scholarly articles or books. R04.10.010.A.1.

<sup>2</sup> University Regulation R04.10.010.B.1.a.

<sup>3</sup> Department of Law Regulation 9 AAC 52.090. UA Regents' Policies further specify that any action that "either (1) has allowed any person, firm, or company to derive an advantage or benefit which has not been made available to all persons, firms or companies on the same or equal basis, or (2) exposes the university to contractual obligation or public liability, will be considered improper and in conflict with the proper discharge of official duties in behalf of the university." P04.10.030.A.

<sup>4</sup> R04.10.030.E.9.

<sup>5</sup> While the UA ethics Regents' Policies and University Regulations generally apply to part-time as well as full-time employees, R04.010.010.A.3, this particular 20% rule differs as to part-time employees, who obviously have more rather than less time to put towards outside activities. Still, part-time UA employees are still subject to the general prohibition against "devotion of such much time or creative energy by a university employee to extramural activities that the employee compromises the amount or quality of his/her participation in the instructional, scholarly or administrative work for which the employee was hired."

<sup>6</sup> The EBEA prohibits the use of "state time" to benefit the outside interests, AS 39.52.120(b)(3).

night and weekend work are less likely to present this latter problem. Some situations might be remedied by adjusting the employee's regular working hours, or reducing from full-time to part-time.)

In terms of limiting the scope of the employee's official UA duties, this most often requires analyzing whether the outside activity may give rise to divided loyalties between what the employee is doing for UA and what the employee is doing in the outside activity. These might arise from exploiting "inside" information available to the UA employee that has not been disclosed to the general public; from the employee having a personal or financial stake in a matter pending before the agency for which the UA employee works; or from grants, contracts, leases or loans which the outside entity might seek and over which the UA employee might have some official role with respect to its award, execution or administration. Sometimes it may be feasible to address this through a re-assignment of the employee's UA duties, but not always; when those re-assignments cover too wide a scope of the UA job responsibilities for which UA is paying the employee, the re-assignment may not be feasible. In that situation the employees may be faced with the unfortunate decision between giving up the outside activity or giving up the UA employment.

#### How do outside activities get reported?

By statute, employees are to report outside services or employment by July 1 annually. UA generally sends out reminders around that date, but because July 1 is not a date well-suited to the academic year, MAU's are encouraged to send out other reminders. And during the year, any change in the employee's outside service or employment must be reported.

The standard UA outside activities form gets reviewed by the employee's work supervisor and the appropriate designated ethics supervisor. Work supervisors with concerns about the outside activity should check the appropriate box and explain the concerns in a memo. The ethics supervisor reviews the disclosure forms either way. The ethics supervisor may approve, or suggest certain limitations or conditions, or may have to conclude that the outside activity is in violation of the EBEA or associated Regents' Policies or University Regulations.

Approval of the disclosure demonstrates that the employee has properly disclosed the activity, and that the employee is authorized to undertake the outside activity. However, it remains the case that the work supervisors may, from time to time, review a case if, in their judgment, reasonable evidence suggests that the outside activity (individually or cumulatively) constitutes in fact a substantial interference with the satisfactory accomplishment of the employee's regular university duties, or the employee may otherwise be violating the provisions of the EBEA or associated Regents' Policies or University Regulations. The outside activity will be reviewed again at the next annual cycle, but that does not preclude review of the situation before that point, when there indications that the outside activities are actually impinge on the employee's fulfillment of UA duties.

#### What if a UA researcher seeks to establish a business to commercialize the resulting intellectual property?

The EBEA contains a particular provision that allows UA's President to waive those portions of the EBEA that might otherwise preclude this type of arrangement. The process of obtaining this approval generally entails working with your MAU's Office of Technology Commercialization or Office of Intellectual Property Commercialization; preparation of a fairly detailed Conflict of Interest Identification and Management Plan, in conjunction with the General Counsel's Office; and review/approvals of the COIMP by the researcher's Dean or Director, Vice Provost or Vice Chancellor for Research, and Chancellor, prior to submission to the President.