

TEXAS DEPARTMENT OF CRIMINAL JUSTICE
PD-80 (rev. 6), “OUTSIDE EMPLOYMENT”
OCTOBER 1, 2018
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Attachment A: PERS 398, Request for Outside Employment (10/18)



TEXAS DEPARTMENT
OF
CRIMINAL JUSTICE

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DATE: October 1, 2018
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SUPERSEDES: PD-80 (rev. 5)
October 1, 2011

EXECUTIVE DIRECTIVE

SUBJECT: OUTSIDE EMPLOYMENT

AUTHORITY: 29 U.S.C. 213, *Fair Labor and Standards Act*; Tex. Gov't Code §§ 492.003(b)-(c), 493.001, 493.006(b), 572.051; *General Appropriations Act*; *Texas Constitution* art. XVI §§ 33, 40(b); BP-02.08, "Statement of Internal Controls"

APPLICABILITY: Texas Department of Criminal Justice (TDCJ)

EMPLOYMENT AT WILL CLAUSE:

This directive **does not** constitute an employment contract or a guarantee of continued employment. The TDCJ reserves the right to change the provisions of this directive at any time.

Nothing in this directive limits the executive director's authority to establish or revise human resources policy. This directive guides the operations of the TDCJ and **does not** create a legally enforceable interest for employees or limit the executive director's, deputy executive director's, or division directors' authority to terminate an employee at will.

POLICY:

Prior to beginning outside employment, a TDCJ employee shall notify and receive approval from the TDCJ in accordance with this directive. The provisions of this directive shall be administered without regard to race, color, religion, sex (gender), national origin, age, disability, or genetic information. The TDCJ has zero tolerance for all forms of employment discrimination. No employee shall be subjected to retaliation for opposing or reporting employment discrimination.

DEFINITIONS:

“Conflict of Interest” is outside employment that conflicts with an employee’s official duties.

Examples of outside employment that represent a conflict of interest: (1) employment that might require or induce an employee to disclose confidential information acquired by reason of employment with the TDCJ; (2) employment in a business, charity, non-profit organization, or professional activity, including self-employment, or receipt of compensation that could reasonably be expected to impair an employee’s independence of judgment in the performance of the employee’s official TDCJ duties; (3) employment intentionally or knowingly solicited, accepted, or agreed upon because the employee exercised official TDCJ powers or duties in favor of another; or (4) employment that includes activity conducted for personal profit that could reasonably be considered contrary to the best interest of the TDCJ.

In addition, a person may not be employed in a TDCJ *Fair Labor Standards Act* (FLSA) exempt position if: (1) the person is an officer, employee, or paid consultant for a Texas trade association in the field of criminal justice; or (2) the person’s spouse is an officer, manager, or paid consultant for a Texas trade association in the field of criminal justice.

“Criminal Justice Related Employment” includes, but is not limited to, employment with one or more of the following: (1) a federal, state, or local law enforcement agency; (2) a federal, state, or local organization or institution responsible for the administration of juvenile or adult penal justice; or (3) a private organization or institution responsible for the administration of juvenile or adult penal justice.

“Employee,” for the purpose of this directive, is any person employed by the TDCJ on a full-time, part-time, or temporary basis.

“*Fair Labor Standards Act* (FLSA) Exempt Position” is a position that is not subject to the wage and overtime provisions of the FLSA because the position’s primary duty assignments pass FLSA executive, administrative, professional, computer, or outside sales exemption tests. An employee in an FLSA exempt position is not eligible for overtime. An FLSA exempt position is not to be mistaken for a position listed in TDCJ’s section of the *General Appropriations Act* under “Schedule of Exempt Positions.”

“Outside Employment,” for the purpose of this directive, is paid compensation for a position with an employer other than the TDCJ, including self-employment.

“Texas Trade Association,” for the purpose of this directive, is a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interests.

“Work Cycle” is the consecutive seven-, eight-, or nine-day period of time during which the hours worked are computed to determine wage and time compensation.

DISCUSSION:

- I. Employment with the TDCJ obligates an employee to give priority to TDCJ job duties and scheduled hours over outside employment duties and hours. An employee shall not accept or maintain any outside employment that represents a conflict of interest, adversely affects the operations of the TDCJ, or requires the use of or derives benefit from state resources. An employee's work hours or work cycle shall not be changed to accommodate outside employment.

Outside employment that violates the guidelines established in this directive may subject an employee to disciplinary action in accordance with PD-22, "General Rules of Conduct and Disciplinary Action Guidelines for Employees."

- II. This directive establishes guidelines for approval of outside employment with an employer other than another state agency, including self-employment. If an employee requests approval to work at another state agency, the Windham School District (WSD), or the Lee College District while employed with the TDCJ, the employee shall request prior approval from the TDCJ human resources director in accordance with PD-81, "Multiple Employments with the State."

PROCEDURES:

- I. Related Prohibitions

- A. Prohibition Regarding Use of State Resources for Outside Employment

State resources shall not be used for outside employment. State resources include state equipment, computers, telephones, copiers, services, vehicles, offender or employee labor, and time. The prohibition against the use of state resources for personal profit or gain is more fully described in ED-02.01, "Texas Department of Criminal Justice Ethics Policy."

The publication and distribution of state office locations, telephone numbers, or addresses for the purpose of furthering outside employment are prohibited. Combining outside employment with assigned TDCJ duties during assigned TDCJ work hours is also prohibited.

- B. Prohibition on Receiving a Salary for Serving as a Member of a Local Governing Body

State employees may serve as members of the governing bodies of school districts, cities, towns, or other local governmental districts; however, the *Texas Constitution* prohibits state employees from receiving a salary for serving as members of these governing bodies, with the following exceptions:

1. An employee who is a schoolteacher, retired schoolteacher, or retired school administrator may receive compensation for serving as a member of a governing body of a school district, city, town, or local governmental district, including a water conservation and reclamation district; or
 2. An employee who is a faculty member or retired faculty member of a public institution of higher education may receive compensation for serving as a member of a governing body of a water conservation and reclamation district.
- C. An employee may not work in outside employment, even if approved through the process outlined in this directive, while on medical leave for the employee's own injury or illness, if the outside employment has duties or physical requirements similar to those of the employee's current TDCJ position.

II. Outside Employment Approval Process

Prior to beginning outside employment, an employee shall complete and submit a PERS 398, Request for Outside Employment (Attachment A), and receive approval in accordance with the following procedures. All requests for outside employment shall be thoroughly reviewed to ensure the outside employment does not represent a real or perceived conflict of interest. TDCJ management shall pay particular attention to requests for outside criminal justice related employment. If TDCJ management is unable to determine whether the outside employment is a conflict of interest, the PERS 398 shall be sent to the TDCJ Office of the General Counsel for review and recommendation.

Outside self-employment, such as photography, arts and crafts, legal consulting, or other similar intermittent activities requires submission of only one PERS 398 per type of activity.

A. Salary Groups A20/B22 and Below, Including Exempt Positions Within This Range of Salary Groups

For an employee in salary group A20/B22 or below, including exempt positions within this range of salary groups, to begin outside employment without delay, the employee may receive temporary approval from the employee's immediate supervisor, if the outside employment clearly does not represent a conflict of interest. The employee shall submit the PERS 398 to the employee's warden or department head. Continuance of the outside employment shall be contingent upon the employee receiving final approval from the warden or department head. If the PERS 398 is not approved, the warden or department head shall provide a written explanation regarding the basis for the disapproval.

The original approved or disapproved PERS 398 shall be provided to the employee's human resources representative. The human resources representative shall:

1. Distribute the original PERS 398 to Employee Services for scanning into the requesting employee's master human resources file;
 2. Maintain a copy in the requesting employee's unit or department human resources file; and
 3. Provide copies to the requesting employee and the employee's supervisor.
- B. Salary Groups B23 and Above Exempt Positions as Listed in the TDCJ Section of the *General Appropriations Act*, Schedule of Exempt Positions, Excluding Executive Director

An employee reporting directly to the executive director, deputy executive director, or a division director shall submit a PERS 398 to the executive director.

1. If the PERS 398 is approved, the executive director shall forward the original PERS 398 to the human resources director. The human resources director shall distribute:
 - a. The original PERS 398 to Employee Services for scanning into the requesting employee's master human resources file; and
 - b. A copy to the requesting employee's human resources representative. The requesting employee's human resources representative shall:
 - (1) Maintain a copy in the requesting employee's unit or department human resources file; and
 - (2) Provide copies to the requesting employee and the employee's supervisor.
2. If the PERS 398 is disapproved, a written explanation regarding the basis for the denial shall be provided and forwarded with the original PERS 398 to the requesting employee's human resources representative. The human resources representative shall:
 - a. Distribute the original PERS 398 to Employees Services for scanning into the requesting employee's master human resources file;
 - b. Maintain a copy in the requesting employee's unit or department human resources file; and
 - c. Provide copies to the requesting employee and the employee's supervisor.

C. Office of the Inspector General (OIG) Employees

An OIG employee shall submit a PERS 398 to the inspector general. If the PERS 398 is not approved, the inspector general shall provide a written explanation of the basis for the disapproval. An OIG employee may obtain additional information regarding outside employment from OIG-01.40, "Off-Duty Employment."

The original approved or disapproved PERS 398 shall be provided to the employee's OIG human resources representative. The human resources representative shall:

1. Distribute the original PERS 398 to Employee Services for scanning into the requesting employee's master human resources file;
2. Maintain a copy in the requesting employee's department human resources file; and
3. Provide copies to the requesting employee and the employee's supervisor.

D. Executive Director

The executive director is prohibited from engaging in any outside employment by BP-01.04, "Standards of Conduct for the Texas Board of Criminal Justice and the Executive Director of the Texas Department of Criminal Justice."

III. Changes to Employee's Position or Work Schedule

An employee's approved PERS 398 shall be valid only while the employee remains in the TDCJ position held at the time the PERS 398 was approved and shall be valid only for the outside employment position and work schedule described on the approved PERS 398. If the employee's position or work schedule with the TDCJ or the outside employer changes, the previously approved PERS 398 shall no longer be valid and the employee shall submit a new PERS 398 for approval.

Bryan Collier
Executive Director

Texas Department of Criminal Justice
Request For Outside Employment
(Please type or print the requested information)

TDCJ EMPLOYEE INFORMATION	
Name: _____ <small style="display: flex; justify-content: space-between; width: 100%;">Last First MI</small>	Month and Day of Birth: _____ <small style="text-align: right;">(MM/DD)</small>
TDCJ Job Title: _____	Salary Group and Rate: _____
TDCJ Regular Card Schedule and Hours: _____	Unit or Department: _____

OUTSIDE EMPLOYMENT INFORMATION	
<input type="checkbox"/> Check here if self-employed, and indicate the name and type of the business, such as Avon, Mary Kay, Amway, webpage designer, real estate broker: _____	
Position Applied For: _____	Work Days and Hours: _____
Proposed Starting Date: _____	Estimated Work Hours Monthly: _____
Employer or Company Name: _____	Company Address: _____
Supervisor's or Company Contact's Name: _____	
Supervisor's or Contact's Title: _____	Supervisor's or Contact's Business Phone: _____
Supervisor's or Contact's Business Address: _____	

CERTIFICATION
Outside employment shall not begin until approved in accordance with PD-80, "Outside Employment." My primary employer is the Texas Department of Criminal Justice (TDCJ) and my outside employment shall not interfere with the performance of my duties at the TDCJ. If this request is approved and my current TDCJ or outside employment changes, this approval is no longer valid and a new request shall be submitted as required.

Employee Signature _____	Date (MM/DD/YYYY) _____
Note to Employee: With few exceptions, you are entitled upon request: (1) to be informed about the information the TDCJ collects about you; and (2) under Texas Government Code §§ 552.021 and 552.023, to receive and review the collected information. Under Texas Government Code § 559.004, you are also entitled to request, in accordance with TDCJ procedures, that incorrect information the TDCJ has collected about you be corrected.	

Salary Groups A20/B22 and Below: <input type="checkbox"/> Approved <input type="checkbox"/> Disapproved	Comments: Written explanation required if request is disapproved.
Warden or Department Head Signature _____	Date (MM/DD/YYYY) _____

Salary Groups B23 and Above Exempt Positions as Listed in the <i>General Appropriations Act</i> , Excluding Executive Director: <input type="checkbox"/> Approved <input type="checkbox"/> Disapproved	Comments: Written explanation required if request is disapproved.
Executive Director, Deputy Executive Director, or Division Director Signature _____	Date (MM/DD/YYYY) _____

Office of the Inspector General (OIG) Employees: <input type="checkbox"/> Approved <input type="checkbox"/> Disapproved	Comments: Written explanation required if request is disapproved.
Inspector General _____	Date (MM/DD/YYYY) _____

INSTRUCTIONS

A. SALARY GROUPS A20/B22 AND BELOW, INCLUDING EXEMPT POSITIONS WITHIN THIS RANGE:

Requesting Employee:

Submit request to warden or department head for approval.

Warden or Department Head:

Upon approval or disapproval, forward the original PERS 398 to the requesting employee's human resources representative.

Human Resources Representative:

1. Distribute the original PERS 398 to Employee Services for scanning into the requesting employee's master human resources file;
2. Maintain a copy in the requesting employee's unit or department human resources file, Employment section; and
3. Provide copies to the requesting employee and the employee's supervisor.

B. SALARY GROUPS B23 AND ABOVE EXEMPT POSITIONS, EXCLUDING EXECUTIVE DIRECTOR:

Requesting Employee:

Submit request to executive director for positions reporting directly to the executive director, deputy executive director, or a division director for approval.

Approved Request:

Executive Director:

Forward the original PERS 398 to the human resources director.

Human Resources Director:

1. Distribute the original PERS 398 to Employee Services for scanning into the requesting employee's master human resources file; and
2. Provide a copy to the requesting employee's human resources representative.

Human Resources Representative:

1. Maintain a copy in the requesting employee's unit or department human resources file, Employment section; and
2. Provide copies to the requesting employee and the employee's supervisor.

Disapproved Request:

Executive Director:

Forward the original PERS 398 to the requesting employee's human resources representative.

Human Resources Representative:

1. Distribute the original PERS 398 to Employee Services for scanning into the requesting employee's master human resources file;
2. Maintain a copy in the requesting employee's unit or department human resources file, Employment section; and
3. Provide copies to the requesting employee and the employee's supervisor.

C. OIG EMPLOYEES:

Requesting Employee:

Submit request to the inspector general for approval.

Inspector General:

Upon approval or disapproval, forward the original PERS 398 to the requesting employee's OIG human resources representative.

Human Resources Representative:

1. Distribute the original PERS 398 to Employee Services for scanning into the requesting employee's master human resources file;
2. Maintain a copy in the requesting employee's department human resources file; and
3. Provide copies to the requesting employee and the employee's supervisor.