

From Their House to Your House: Employment Negotiations and Arrangements with Members and Staff of Congress

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As this congressional election year begins, a number of prominent members of the House of Representatives and of the Senate have announced they will not seek reelection in November 2010. Although their terms will run for almost another year, it's not too soon for prospective private employers of retiring members-or, perhaps more importantly, of their already job-hunting senior staff-to review the restrictions on employment negotiations by members and staff of the House and Senate. Some of the key restrictions under House and Senate rules are outlined here.

Employment Negotiations in the House

By House Rule, a member may not "directly negotiate or have any agreement of future employment or compensation" unless:

- Within three business days after the commencement of any negotiation or agreement for future employment or compensation with a private entity, the member completes and submits a "Notification of Negotiations or Agreement for Future Employment" form to the Committee on Standards of Official Conduct (the Ethics Committee) disclosing the name of the private entity and the date the negotiations or agreement commenced; and
- The member recuses himself or herself "from any matter in which there is a conflict of interest or an appearance of a conflict for that member." Upon such recusal the member also must complete and submit a "Statement of Recusal" form with the Ethics Committee and file a copy of the "Notification of

Authors

Robert L. Walker
Of Counsel
202.719.7585
rlwalker@wiley.law

Caleb P. Burns
Partner
202.719.7451
cburns@wiley.law

Negotiations or Agreement for Future Employment" form with the Clerk of the House for public disclosure.

Except for the requirement to file a copy of the "Notification of Negotiations" form with the Clerk upon recusal, these same requirements also apply to "very senior staff" (defined by House salary level).

In the House, the term "negotiations" is defined broadly to include any "communication between two parties with a view toward reaching an agreement and in which there is active interest on both sides." However, "preliminary or exploratory talks" do not constitute "negotiations."

In addition to these specific requirements, the Ethics Committee cautions members and employees to "be particularly careful in negotiating for future employment" and even advises, among other suggested precautions, "an exchange of correspondence with any serious negotiating partner" stating that no official favors will be received in connection with the job negotiations.

Employment Negotiations in the Senate

By Senate Rule, a Senator may not engage in negotiations or make any arrangements for jobs involving lobbying until after his or her successor has been elected. A Senator may not engage in negotiations or arrangements for post-Senate employment that does *not* involve lobbying unless, within three days of commencing such negotiations or arrangements, the Senator files a signed, public statement with the Secretary of the Senate disclosing the names of any private entities involved in the negotiations or arrangements and the date the negotiations or arrangements commenced.

Also by Senate Rule, senior Senate staff (defined by salary level) must notify the Senate Ethics Committee in writing within three days after they start negotiating or making arrangements for a job with a private employer. Senior Senate staffers engaged in these job negotiations or arrangements also must: recuse themselves from official matters creating a conflict of interest or an appearance of a conflict; refrain from contacting their prospective employers on matters of legislative interest to those employers; and notify the Senate Ethics Committee in writing of any such recusals.

In the employment context, the Senate Ethics Committee has defined "negotiation" to mean "the discussion of terms and conditions of employment after an offer has been made and the Member or Senate staffer is considering accepting." Note that this is a considerably narrower definition than that used by the House. Also in the Senate, an "employment arrangement" "begins when an offer has been made and accepted."

Other Considerations in Job Negotiations with House and Senate Members and Staff

In addition to the requirements discussed above, other provisions of House and Senate rules (for example, the gift rules), as well as the restrictions on post-employment activities imposed by federal criminal law, are relevant to the process of employment negotiations and arrangements between private employers and members or senior staff of the House and Senate. Before entering into negotiations with congressional officials, and certainly before making any employment decision, prospective employers should understand how these provisions and restrictions will affect not only the negotiation process, but also the on-the-job activities of a House or Senate hire.