

## ***Human Resources Branch Memorandum***

SUBJECT: <b>Incompatible Activities Reminder</b>	NUMBER: <b>HRB 19-008</b>
DISTRIBUTION: <b>CDFW All</b>	DATE ISSUED: <b>April 11, 2019</b>
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Action Required       Informational Only       Control Agency Directive

### **Purpose**

On behalf of the Office of General Counsel (OGC), the Human Resources Branch (HRB) reminds all California Department of Fish and Wildlife (CDFW) employees that, regardless of classification or title, all CDFW employees are required to comply with CDFW's Incompatible Activities Policy.

### **Authority**

- [CDFW Incompatible Activities Policy](#)
- California Government Code 19990
- California Code of Regulations, Title 3, Division 8, Section 8000 et seq.
- California Code of Regulations, Title 16, Division 42, Section 5000 et seq.

### **Incompatible Activities Policy**

CDFW created its Incompatible Activities Policy as required in Government Code section 19990 and each employee receives a copy when starting their employment with CDFW. Additionally, it can be found on the Intranet at the link listed above in "Authority". CDFW's Incompatible Activities Policy provides in part that "A State officer or employee shall not engage in any employment, activity, or enterprise which is clearly inconsistent, incompatible, in conflict with, or inimical to his/her duties as a State officer or employee". It also includes certain statements, examples and guidelines intended to illustrate general principles of avoiding incompatible activities. It should be noted here that those statements, examples and guidelines are not an attempt to specify every situation that may constitute an incompatible activity.

Incompatible activities may arise out of many different circumstances. Therefore, it is important to review our Incompatible Activities Policy when your appointment, transfer or promotion within CDFW results in a change of your duty statement. Another time it is important to review our Incompatible Activities Policy is when the duties of your existing position adapt to new Departmental functions. For example, the California Legislature recently enacted the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA)<sup>1</sup> which sets forth the statutory requirements for lawful commercial

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<sup>1</sup> California Business and Professional Code sections 26000, et. seq.

cannabis businesses. California's licensing agencies adopted regulations to restrict who may hold licenses under MAUCRSA.

Two sections pertinent to CDFW employees are:

1. CCR, Title 3, Division 8 (Cannabis Cultivation Regs), section 8000 et seq.

§ 8215. Personnel Prohibited from Possessing Licenses

- a. A license authorized by the Act [MAUCRSA] and issued by the department [CalCannabis] may not be held by, or issued to, any person holding office in, or employed by, any agency of the State of California or any of its political subdivisions when the duties of such person have to do with the enforcement of the Act [MAUCRSA] or any other penal provisions of this State prohibiting or regulating the sale, use, possession, transportation, distribution, testing, manufacturing, or cultivation of cannabis.
- b. This section applies to, but is not limited to, any persons employed in the State of California Department of Justice as a peace officer, in any district attorney's office, in any city attorney's office, in any sheriff's office, or in any local police department.
- c. All persons listed in subsections (a) and (b) may not have any ownership interest, directly or indirectly, in any business to be operated or conducted under a cannabis license.
- d. This section does not apply to any person who holds a license in the capacity of executor, administrator, or guardian.

2. CCR, Title 16, Division 42 (Bureau of Cannabis Control Regs) section 5000 et seq.

§ 5005. Personnel Prohibited from Holding Licenses:

- a. A license authorized by the Act and issued by the Bureau may not be held by, or issued to, any person holding office in, or employed by, any agency of the State of California or any of its political subdivisions when the duties of such person have to do with the enforcement of the Act or any other penal provisions of law of this State prohibiting or regulating the sale, use, possession, transportation, distribution, testing, manufacturing, or cultivation of cannabis goods.
- b. This section applies to, but is not limited to, any person employed in the State of California Department of Justice as a peace officer, in any district attorney's office, in any city attorney's office, in any sheriff's office, or in any local police department.
- c. No person listed in subsection (a) or (b) of this section may have any ownership interest, directly or indirectly, in any business to be operated or conducted under a cannabis license.
- d. This section does not apply to any person who holds a license in the capacity of executor, administrator, or guardian.

Many CDFW employees are now in positions where they may be setting policy, drafting regulations, helping to permit, or regulate activities related to commercial cannabis cultivation, distribution, manufacture, or transportation. If your job requires you to perform those types of duties and you have a direct or indirect interest in commercial

cannabis, you should review the Incompatible Activities Policy to determine if you are in violation.

However, having an interest in commercial cannabis is just an example of one of many circumstances in which an incompatible activity may arise. Therefore, if you are undertaking or plan to undertake any activity that might be considered clearly inconsistent, incompatible, or in conflict with your duties as a State employee or officer, the Incompatible Activities Policy requires that you contact your supervisor. If your supervisor is unable to make a determination whether your activity is incompatible, your supervisor shall refer the matter of the OGC.

### **Contact**

CDFW seeks to work with employees to help them understand the Incompatible Activities Policy so they can avoid being in violation. As stated above, if you suspect that you are participating in or plan to participate in an activity that may be incompatible, or you have any other questions about this memo, please consult your supervisor.