

Rule 418

Conflict of Interest

Applicability: The provisions of Rule 418, shall apply to employees in all MTA Service-Critical classes.

Sec. 418.1 **Charter Restriction**

Sec. 418.2 **Additional Employment**

Sec. 418.3 **Activities as Independent Contractor Performing Services for the City**

Sec. 418.4 **MTA Director of Transportation/Designee to Act on Requests**

Sec. 418.5 **Activities Other Than Employment Where Income, Profit, or Other Gain is or May be Accrued**

Sec. 418.6 **Penalties**

Rule 418

Conflict of Interest

Applicability: The provisions of Rule 418, shall apply to employees in all MTA Service-Critical classes.

Sec. 418.1 **Charter Restriction**

418.1.1 No officer or employee of the City and County may engage in any employment, activity, or enterprise that the department, board, commission, or agency of which he or she is a member or employee has identified as incompatible in a statement of incompatible activities adopted under Section 3.218a of the Campaign and Government Conduct Code. No officer or employee may be subject to discipline or penalties under this Section unless he or she has been provided an opportunity to demonstrate that his or her activity is not in fact inconsistent, incompatible or in conflict with the duties of the officer or employee. (Campaign and Government Conduct Code Section 3.218a)

418.1.2 The Ethics Commission is charged with administering and enforcing the governmental and ethics laws of the City and County of San Francisco. (Charter Section 15.100 - 15.102)

Sec. 418.2 **Additional Employment**

418.2.1 **Requirement of Approval**

Except with the approval of the MTA Director of Transportation/Designee as herein provided, no person holding an appointment with the City and County of San Francisco, shall engage in any employment, position or service (including business owners, consultants and independent contractors), hereinafter for purposes of this section referred to collectively as "employment" in or out of the service of the City in which the employee is required to perform any duties related to or in furtherance of that employment, position or service, and for which the employee is to receive compensation in any form, including salary, wage, fee, commission, or emolument.

418.2.2 **Procedures for Approval**

Approval of the MTA Director of Transportation/Designee, in accordance with the provisions of this Rule, shall be requested on a form provided by the Municipal Transportation Agency. Such form shall include the following:

418.2.2 **1) Approval of the MTA Director of Transportation/Designee;**
Procedures for Approval (cont.)

- 2) A statement reporting the nature of the other employment;
- 3) The usual place of such other employment and the work schedule and number of hours of service required of the employee per day and per week;
- 4) The signature of the official or person for whom or under whom the employment is to be performed, and a statement by such person that it is understood that the employee is regularly employed in the City service on a full-time basis; and
- 5) A statement that approval, if granted, shall not be for more than twelve (12) months, and if extension is desired, a new request form must be submitted.

418.2.3 Conditions for Denial

Requests to engage in additional employment under the provisions of this Rule will not be approved by the MTA Director of Transportation/Designee unless there is compliance with the following condition:

- 1) That the employment will not impair the efficiency or interfere in any way with the full and proper performance of the employee's regular civil service employment;
- 2) That the performance of such employment is in no way inconsistent, incompatible or in conflict with assigned civil service duties or responsibilities of the employee's department or appointing officer;
- 3) That the performance of such employment will not be contrary to the interests of the City service generally and will not lead to situations which would reflect discredit on the City service;
- 4) That such employment will not involve any duty whatsoever of the employee during the employee's regular City work schedule.
- 5) That the employment will not be in a hazardous occupation that would involve a substantial risk of injury to the employee. The MTA Director of Transportation/Designee will determine whether such employment is unduly hazardous and will be guided in making a determination by the Manual of Rules, Classifications and Basic Rates for Workers' Compensation Insurance as published by the California Inspection Rating Bureau.

Sec. 418.3 Activities as Independent Contractor Performing Services for the City

418.3.1 Definition of Independent Contractor

1) An independent contractor is as defined by the Internal Revenue Service, and one who is performing services for another, and the person for whom the services are performed, have the right to control or direct only the result of the work and not the means and methods of accomplishing the results.

2) For purposes of this Rule, the determination of an individual's status as an independent contractor is based upon a review of the person's income from the secondary activity, i.e., if deductions are made for income tax, Workers' Compensation, Social Security and Medicare, or Unemployment Insurance, then the person is not considered to be an independent contractor.

418.3.2 Requirement of Approval Prior to Accepting Work with the City as an Independent Contractor

Officers or employees who offer their services to the City as independent contractors are also required to obtain the approval of the MTA Director of Transportation/Designee prior to accepting work with the City.

Sec. 418.4 MTA Director of Transportation/Designee to Act on Requests

The MTA Director of Transportation/Designee is authorized to consider and act on requests for approval of employment or work as an independent contractor with the City in addition to City and County of San Francisco employment in accordance with the provisions and requirements of this Rule and subject to the appeal provisions as provided elsewhere in these Rules.

Sec. 418.5 Activities Other Than Employment Where Income, Profit, or Other Gain is or May be Accrued

418.5.1 No officer or employee shall participate in any activity or enterprise where income, profit or other gain is or may be accrued, which could reflect on the honor or efficiency of the City service, or be contrary to the best interests of the City service in any respect.

418.5.2 The MTA Director of Transportation/Designee shall report to the Commission those activities or enterprises which, in accordance with the provisions of this section, should be prohibited to specific classifications or positions or departmental units under their jurisdiction.

Sec. 418.5 Activities Other Than Employment Where Income, Profit, or Other Gain is or May be Accrued (cont.)

418.5.3 The Commission shall calendar such report of the MTA Director of Transportation/Designee for hearing and shall give notice of such hearing to parties of interest. If the report, or any part of the report, of the MTA Director of Transportation/Designee is approved by the Commission, the MTA Director of Transportation/Designee shall make such information concerning the approval by the Commission known to each employee affected, and the engagement in any such activity or enterprise shall thereafter be prohibited.

418.5.4 No officer or employee shall be involved through secondary parties in the engagement of any activity or enterprise which the employee is prohibited from engaging in directly, nor in that connection shall the employee lend, convey, or authorize the use of any information or resources under the employee's control.

Sec. 418.6 **Penalties**

418.6.1 Violation of this Rule shall be deemed insubordination, subject to disciplinary action as provided in Charter Sections A8.341 and A8.342.

418.6.2 Failure to report or engaging in activities identified as incompatible in the department's adopted statement of incompatible activities may subject an officer or employee to discipline, including removal from office, as well as to monetary fines and penalties.