

Agency for Modernisation
Local Government Denmark
Danish Regions

Code of conduct in the public sector

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Preface

Employees in the public sector contribute greatly to ensuring that the citizens have trust in the sector and that they consider it to be reliable, efficient and competent. That is one of the reasons that Denmark is one of the least corrupt countries in the world.

It is crucial for the society and the sense of community as we know them that this trust be maintained.

The public sector performs many different types of tasks of great importance to the citizens. The many highly qualified and dedicated employees in the public sector ensure every day a high level of quality in each of the tasks they carry out.

The purpose of this guide is to convey a number of the fundamental rules and principles that apply in the public sector for both employees and for the public authorities that employ them.

It is important that all public employees are aware of their responsibilities. The guide is thus intended to help avoid cases where doubt can arise regarding the conduct of public employees, for example with regard to whether a public employee has wrongfully received gifts from citizens or enterprises in the capacity of their work. Thus, the guide is also intended as an aid to employees, helping them to avoid being unintentionally brought into situations where they may end up violating existing rules and norms.

The guide applies to all public employees, for example civil servants, those employed on a group contract basis, those employed on individual contracts, those permanently employed, and those employed on a fixed-term basis, etc.

The guide briefly outlines the various rules and principles. It is not meant to replace the general and more detailed rules and guidelines etc. that may be established within each of the individual spheres of the public administration and the various places of work.

It is important to emphasise that certain themes within this guide, for instance the question of unlawful orders and employment law liability, generally lie quite some distance from the reality that characterises the workday of an employee in the public sector. That the guide also covers these topics must thus not remove focus from the fact that it is usually entirely different topics such as work satisfaction, dedication and performing tasks beneficial to society that characterise the employees' daily work.

In the list of references, additional material is provided concerning the rules and principles for employees in the public sector. Among other things, reference is made to the Ministry of Finance's guideline "Codex VII - Seven Key Duties for Civil Servants in Central Government," which describes the duties of legality, truthfulness, professionalism, development and cooperation, responsibility and management, openness about errors, and party-political neutrality. Reference is also made to Local Government Denmark's (KL) inspiration catalogue "Code of

Quality and Ethics in the Public Administration," which besides being an interpretation of the seven key duties for civil servants also contains themes for discussion regarding the relationship between local politicians and the public administration to be used in the individual municipalities. In addition, reference is also made to the Ministry of Justice's guide "How to Avoid Corruption," which describes the rules governing corruption.

This guide is a revised edition of the guide that was issued in 2007. In order to make it easier to read and to understand, the language in the guide has been adjusted. A new section on sound financial management has been added, and the sections on liability and the employees' reaction options have been collected into a single section on responsibilities, duties and rights. The section on public employees' freedom of expression builds on the Ministry of Justice's guideline on freedom of expression for public employees. The section on gifts is a combination and revision of the section from the 2007 guide and The State Employer's Authority's memorandum "Accepting gifts, invitations and other benefits" from 2010.

This revision has been undertaken by the Ministry of Finance (the Agency for Modernisation) in collaboration with the Prime Minister's Office, the Ministry of Justice, the Ministry for Economic Affairs and the Interior, Danish Regions and Local Government Denmark.

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1. Fundamental values

Values

The public sector is based on values such as openness, democracy, the rule of law, objectivity, integrity and impartiality as well as the requirement of lawful administration (the principle of legality). At the same time, the public sector is expected to perform tasks in a flexible and efficient manner and to deliver services of a high standard.

The public sector comprises a wide number of different public authorities and institutions each with quite different relationships with the citizens. Common to all of these authorities and institutions is that they must treat citizens in a competent, proper and considerate manner based on the values specified above. Management and employees have a shared responsibility to ensure that this takes place.

It can be a good idea to discuss the meaning of these values when working, for example, with the mission, vision and areas of focus at the individual places of work.

Good administration

There are a number of general rules defining how public authorities, institutions and employees are to handle cases involving citizens and, additionally, how they are to interact with citizens. A good number of these rules are found in the Public Administration Act (*Forvaltningsloven*), the Access to Public Administration Files Act (*Offentlighedsloven*) and the legislation governing data protection. In the Access to Public Administration Files Act, there are, among other things, provisions concerning impartiality, the hearing of parties and the giving of grounds. The rules are to ensure, among other things, that citizens are included in the process before public authorities make decisions involving them and that the decisions are correct and understandable.

The Public Administration Act also includes rules on the duty public authorities have to provide guidance and assistance to citizens. The content of the guidance is to be such that citizens are not deprived of a right and do not experience financial loss or similar consequences due to errors, ignorance or misunderstandings.

In addition, the Public Administration Act also includes rules concerning the right to access to public documents for persons who are a party in matters of dispute at a public authority. The rules regarding access to public documents for people who are not a party in a matter of dispute are found in the Access to Public Administration Files Act.

The data protection legislation sets out the rules governing when the handling of personal information may take place and the security requirements in such cases. For instance, a consequence of the data protection legislation is that when a public authority collects personal information, the purpose of collecting the information must be made clear, and that pur-

pose must be legitimate. Those people whom the authority collects personal information about also have a number of rights in this regard, for example the right to access the documents and a right to raise objections.

Along with the written rules laid out in, for instance, the Public Administration Act, there are also a number of unwritten rules and principles that apply with regard to lawful administration. For example, there is a principle that public authorities must ensure that cases are sufficiently examined before a decision is made. (the official principle).

Public authorities and institutions must, moreover, act within the framework of the principles for good administrative practice when dealing with citizens. These principles were established by, among others, the Parliamentary Ombudsman, and they are an expression of how public authorities, institutions and employees should conduct themselves with regard to citizens. Public authorities, institutions and employees generally demonstrate good administrative practice when they

- display politeness, consideration and attention towards citizens and
- act in a way that strengthens trust in the public administration.

Good administrative practice also places demands on public authorities and employees when handling individual cases. For example, authorities must respond to inquiries from citizens within a reasonable amount of time, notify citizens about developments in a case, and answer citizens in a language that is easy to understand.

Special rules for individual workplaces

Employers have the authority to issue directions to employees. This means that employees must observe the rules and policies which management has established. These rules may, for example, involve the employees' use of the internet and social media platforms during work hours, language use with regard to citizens, dress requirements or requirements defining how they are to collaborate internally at their place of work. Employees must comply with any information-security policies which have been established.

It is the employers' responsibility to ensure that all employees are familiar with the special conditions that apply at the particular place of work and how various situations are expected to be handled.

Cases can of course occur when an employee is in doubt about how a specific situation should be handled. In such cases, it will always be a good idea to clarify the issue with management.

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- It is a joint responsibility for public authorities, institutions and employees to respect the fundamental values of the public sector.
 - Public authorities and employees must demonstrate good administrative practice, i.e. treat every citizen politely and with consideration, and act in a way that strengthens citizens' confidence in the public administration.
 - Employers must ensure that employees have the necessary knowledge of the special conditions that apply at the specific workplace..
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2. Authority to issue directions

Introduction

The daily work at workplaces in the public sector is usually performed as a collaboration between the employees and management, where the question of how the tasks that are to be carried out is discussed on a regular basis.

Public employees must adhere to the professional standards that are generally recognised within the particular area of work. In cases when there are different points of view in this regard, management makes a decision, which the employees must then abide by.

The fact that it is management that makes the necessary final decision when doubts arise is in accordance with the general principles on the rights of management and the authority to issue directions. At the same time, management thus assumes responsibility for ensuring that the right decisions are made.

As a rule, employees have a duty to obey the public authorities or institutions they are employed by. This duty requires that employees follow orders (decisions) issued by their superiors within the framework of the law.

If an employee does not carry out a lawful order, it is, in principle, considered a breach of duty, which must be handled according to employment law rules. In particularly serious cases, it may also be a matter of criminal liability.

Duty to advise and warn

Public employees must make their superiors aware of any doubts that they may have about the legality of an action or decision within their field of work so that the superior can decide on the issue.

This also applies if there are doubts about the factual or technical basis for a decision.

When such situations arise, the question will typically be resolved through the normal dialogue between the manager and the employee after the employee has drawn attention to the situation and explained their concerns.

There can, however, be situations when the manager issues an order (makes a decision) which the employee does not agree with. This may be because, for example, the manager does not share the employee's assessment of the situation. If the employee considers the order to be unlawful or in conflict with standard professional norms, the employee in question must make the manager aware of their opinion. The employee must do this even though the manager has notified the employee that the decision has been made. However, it is the man-

ager who ultimately has the right and the responsibility to determine whether a decision etc. is lawful and professionally sound.

When such disagreements arise where a manager maintains a decision against advice, the employee must carry out the manager's order, unless the employee is certain that the matter is unlawful (manifest illegality).

Example: A manager in a municipal government indicates that a local business should be given an injunction. The employee handling the matter finds it doubtful that an injunction lies within the framework of the relevant legislation.

The employee must explain their understanding of the situation, but will -- if the manager maintains their assessment that the injunction is legal -- have both the right and the duty to carry out the order.

In a situation when the order is not manifestly unlawful, the employee will not incur employment law problems or criminal liability for carrying out the order, even if it subsequently becomes apparent that the manager's decision was in fact unlawful.

That an employee in a public authority or institution does not incur personal liability for carrying out an unlawful order is not altered by the fact that the public authority has neglected its responsibility by acting in an unlawful manner.

If, on the other hand, the employee refuses to carry out the order, it will, in principle, be considered a breach of duty, even if a subsequent overall assessment determines that the order must be considered to be unlawful. However, it must be presumed to be highly unlikely that in such a situation the employing authority would have a sufficient basis for assigning such liability to the employee.

Right and duty to decline

Employees have both a right and a duty to decline an order if a manager issues and maintains an order that is manifestly unlawful or which requires the employee to do something that is itself a criminal offence.

This also applies even if the order is to not to do something, for example to fail to make a decision for which there is a legal duty to make.

An employee who carries out such a manifestly unlawful order may face employment law -- and in particular cases criminal -- liability for having carried out the order.

At the time that the employee declines to carry out an order, they must explain to the manager their reasoning for declining the order and recommend that the manager rescind the manifestly unlawful order.

If the manager maintains the order, the employee must notify the manager's immediate superior of the situation. The employee should, no later than at the time of notifying e.g. the head of department, inform the manager that they have referred the matter higher up.

With regard to the question of notifying external parties about unlawful circumstances or circumstances that are counter to standard professional norms in the public sector, please see section 3 on public employees' freedom of expression.

- Public employees must comply with lawful official orders.
- Public employees must make their superiors aware of doubts regarding the legality of actions etc.
- If an order is manifestly unlawful, the employee must not carry out the order.
- If the order is not manifestly unlawful, the employee must carry out the order.

3. Public employees' freedom expression

Introduction

Just as all other citizens, public employees are protected by, among other things, the provision in the Danish Constitution regarding freedom of expression and may participate in the public debate on their own behalf and express personal opinions, including on topics involving their field of work. This broad freedom of expression means that public employees in general cannot be dismissed, demoted or in other ways be faced with negative consequences on the job as a result of their statements.

In principle, this protection includes all forms of expression, i.e. everything from job descriptions and points of view to political opinions. It applies regardless of whether the statements are expressed in writing, in speech or in the form of pictures and regardless of whether they are made in the context of speeches, meetings, interviews, letters-to-the-editor, opinion pieces, comments on social media platforms, artistic forms of expression etc.

This protection also means that public authorities may not establish rules stipulating that permission must be acquired from the appointing authority prior to making the statements public. Nor may any other hindrances be placed in the way of making such statements public.

Public employees are though -- just as all other citizens -- subject to certain limitations to their freedom of expression.

If, as a public employee, doubt arises as to what extent an intended statement or a statement that has already been made public lies within the scope of their freedom of expression, the employee can, for example, contact their labour union. In addition, the scope of the law is also described in the Ministry of Justice's guidelines on public employees' freedom of expression.

Statements on behalf of yourself or on behalf of the public authority

Public employees may participate in the public debate on their own behalf and express personal opinions and points of view. This also applies to topics that involve the employee's own field of work. Moreover, it also applies to when they are not speaking only on their own behalf but also when they are speaking at the same time on behalf of others, for example labour union representatives who speak critically about the conditions at the workplace on behalf of a group of employees.

Example: A trade union representative at a school expresses concerns to a newspaper that there is a lack of leadership focus on students' academic development.

There is nothing that hinders trade union representatives from expressing themselves in this way.

The protection of public employees' freedom of expression only applies when public employees are expressing themselves on their own behalf. Conversely, this means that the management at a workplace in the public sector may establish rules stipulating who may express themselves on behalf of the authority. Management may also establish guidelines for the content of statements that are made on behalf of the authority.

On the other hand, when public employees express themselves on their own behalf, management may not demand that they receive permission prior to making a planned statement. Nor may management demand that they be notified about statements made on an employee's own behalf.

If there is a possibility that the general public could mistakenly consider a statement to be an expression of the public authority's point of view, then employees must take care to make it clear that they are expressing themselves on their own behalf.

Confidentiality

Public employees have a duty of confidentiality regarding private information which they gain access to through their work. As a clear general rule, public employees may not express themselves about information that is covered by the duty of confidentiality.

Example: A nurse who is employed at a hospital in the accident and emergency department writes in an update on a social media platform that she has just received a patient who has been involved in a drink-driving situation and refers to the person by name.

This is considered a breach of the duty of confidentiality and is thus an unlawful statement.

If a public employee is in doubt as to what extent a piece of information is confidential and thus subject to the duty of confidentiality, they can, for example, consult with their manager about the situation. For further information, refer also to section 4 on the duty of confidentiality.

There are some quite exceptional cases when public employees do in fact have a right to express themselves on, for example, confidential information. These cases are described in detail below under that section on public employees' right to disclosure and "whistleblowing."

The public authority's internal decision-making process and its ability to function

In certain special cases, public employees must display caution with regard to expressing themselves out of consideration for a public authority's internal decision-making process and its ability to function.

These limitations apply only to statements regarding matters lying within ones own sphere of work and normally only for key employees who have been involved in the decision-making process.

Employees with duties which lie far from the political and administrative decision makers and who therefore are not nor have been actively involved in the decision-making process will generally not be subject to this limitation.

If it is a matter of a statement concerning a decision that has been made by a public authority, it will make a difference whether the statement is made before or after the decision was made. A statement that is made public prior to or in close proximity to when the decision was made can have a greater negative impact on the internal decision-making process than a statement that is made long after the time when the decision was made.

Example: A newspaper publishes an opinion piece with critical comments regarding the consolidation of a nursery and a kindergarten into a single integrated institution. The piece is written by the deputy manager of the nursery. The deputy manager in question has not been actively involved in the decision to consolidate the two institutions.

There is nothing preventing this person from expressing themselves in this way.

Public employees enjoy considerable freedom to comment on matters of resources that may have a major impact on the future conditions at their workplace, e.g. budget cuts.

A public employee has the right to express any criticism publicly without first mentioning it internally at the workplace, e.g. discussing it with management or a union representative. In a number of situations, it could though be most appropriate and sensible to raise the issue first via internal systems, for instance due to the opportunity provided for improving the conditions one finds objectionable and out of consideration for the cooperative relationship at the workplace in the future. The employer cannot, however, make this a requirement.

Other limitations

Public employees -- just like other citizens -- may not make defamatory statements or statements which constitute an invasion of privacy. Such statements are criminal offences in accordance with the provisions in Section 27 of the Danish Criminal Code. This includes, among other things, disclosing information about another person's completely private circumstances or making slanderous statements.

Example: An employee at a care home writes in a post on a social media platform that one of her colleagues is stealing from the residents of the care home, even though the employee is well aware that it is in fact not true.

This is an unlawful statement because it contains an untrue accusation that a

colleague has committed a criminal offence.

As a public employee, you are allowed to criticise the conditions at your workplace if the conditions give you cause. But you may not express yourself in an unreasonably crude way, and you may not present manifestly false information about substantial circumstances within your own field of work.

Example: A municipal building inspector provides incorrect information in an interview for a newspaper stating that he has been ordered by management to grant planning permissions in violation of the rules.

If the statement is manifestly false, then it is an unlawful expression.

Management may not -- for example with reference to the duty of loyalty between employees and their workplace -- impose additional limitations on the employees' freedom of expression.

Public employee's right to disclosure and "whistleblowing"

Public employees have a so-called right to disclosure. This means that public employees have a right to give the press and other external parties information in cases when there may be questions of unlawful administration or other types of wrongdoing in the public administration -- e.g. obvious misuses of public funds. Such forms of expression are sometimes also referred to as "whistleblowing."

In general, public employees may freely disclose non-confidential information to the press or other external parties. This also applies in cases when there may be a question about unlawful administration or other types of wrongdoing in the public administration, including clear misuses of public funds.

If the matter concerns confidential information, according to the Criminal Code such information may only be disclosed to the press or other parties if it serves a manifest public interest or is in the best interest of oneself or others. This would, for instance, be the case in the very special situations when the employee discloses information about confirmed illegalities within the public administration.

Conversely, as a public employee you must be aware of the fact that it is a criminal offence to disclose confidential information if disclosing it does not serve a manifest public interest or the best interest of oneself or others. At the same time, it could lead to negative employment law consequences -- e.g. dismissal. The detailed assessment as to whether the disclosure of confidential information serves the considerations defined above will be based on a specific judgement, which is ultimately made by the courts.

In addition, public employees who are issued unlawful orders have a right -- and in certain cases also a duty -- to make known internally within their workplace any unlawful, including professionally irresponsible, circumstances that they become aware of. For more information, refer to section 2 regarding the authority to issue directions.

Public employees have, moreover, the right to contact relevant external supervisory bodies, including the Parliamentary Ombudsman or the National Audit Office in clear cases of wrongdoing.

Public employees cannot be required to have given a prior internal notification about wrongdoing or irresponsible circumstances if the employee determines that such notification cannot be expected to achieve a result. In such cases, the employee may instead go directly to, e.g. the press, the Parliamentary Ombudsman or the National Audit Office.

Public employees who contact a public authority regarding, for example, cases of unlawful administration cannot expect that their identity will not be made known to other people if their identity is apparent from the case. This is due to the fact that that this type of information will generally be subject to the right to access to public information.

Legal statements and reactions from management

If public employees make statements in accordance with the principles described in this guide, then they are lawful statements. This means that the statement cannot in and of itself lead to dismissal or other types of direct or indirect sanctions -- such as changes in the employee's field of work or the employee not being considered for a bonus.

There can though be cases when the consequences of a lawful statement -- for example about interpersonal difficulties -- are so serious in nature that they can form the basis for management making use of the reactions mentioned above with regard to the employee in question.

In such cases, management must be particularly aware of the requirements stipulating that the interpersonal difficulties must be significant in nature and that the difficulties for the most part must be the fault of the employee and that management must seek to solve the problems regarding the interpersonal difficulties in the least invasive way for the employee. At the same time, management must be mindful of whether they can prove the facts of the situation in question and that, in that regard, it is required that there be a particularly clear evidential basis for the claims being made. In addition, management must keep in mind the significant consideration that must be given for the employee's freedom of expression.

If you, as a public employee, experience being met with a negative reaction from management because of a lawful statement, you can contact your professional association or your labour union.

If you, as a manager in a public authority, are in doubt about the extent to which the conditions are present for using negative management reactions with regard to an employee because of statements they have made and this doubt cannot be clarified internally within the public authority, in keeping with standard practice, the public authority may then contact Local Government Denmark, Danish Regions or the Agency for Modernisation in order to discuss the issue.

- It is both useful and natural that public employees exercise their right to freedom of expression and that they contribute to the public debate with their knowledge and points of view.
- As private individuals, public employees have a wide-ranging freedom of expression, including the freedom to comment on matters involving resources which may have a significant impact for the workplace.
- Consideration for the internal decision-making processes and the ability of public authorities to function can lead to limitations in the freedom of expression of employees in key positions.
- There are very few other limitations to the freedom of expression, for example, information that is confidential, defamatory statements along with manifestly false information about the workplace.
- The duty of loyalty under employment may not lead to additional limitations in the freedom of expression.
- Public employees have a right to disclose information to the press, among others, when there may be a question of unlawful administration or other types of wrongdoing in the public administration.
- A lawful statement cannot in itself lead to negative management reactions.
- A duty does not exist to put forward critical comments internally first, but in general openness and constructive debate should be encouraged at each place of work.

4. Duty of confidentiality

Introduction

Public employees are generally allowed to tell people about their work, c.f. section 3 on public employees' freedom of expression. Openness in this respect contributes to the citizens' understanding of and trust in the public sector.

There are however limits to the extent to which employees may disclose information that they have acquired in connection with their work. This is mainly a consequence of the general rules regarding the duty of confidentiality, which is found in the Danish Criminal Code and the Public Administration Act, as well as the legislation governing the protection of data if the matter involves personal data. For example, it is not allowed to disclose information regarding personnel files.

Furthermore, public employees may not obtain or in any other way gain knowledge of confidential information that is not relevant for performing their jobs, including information about citizens or private enterprises.

The duty of confidentiality does not only apply while a person is employed in the public sector. This duty also continues to apply after the period of employment has come to an end. Far from all information that employees become knowledgeable of though is subject to the duty of confidentiality.

It is important that public authorities and institutions protect the information that they handle regarding citizens and that the personal integrity and privacy of citizens are not infringed on.

Confidential information

The Criminal Code specifies that public employees have a duty of confidentiality when a piece of information has been designated confidential by law or by any other valid provision, or when it is otherwise necessary to keep certain information secret in order to safeguard significant considerations to private or public interests.

Significant considerations to private or public interests

Section 27 of the Public Administration Act lists a number of public and private interests that - based on a specific assessment -- can lead to certain information being designated confidential and thus subject to the duty of confidentiality.

Of the *private* interests that can lead to information being designated confidential can be named, for example:

- Individuals' private, including financial, circumstances.
- Individuals' or enterprises' business circumstances.

Confidential information about private circumstances can, for example, include information about a person's criminal history, health situation, social problems or private financial circumstances.

Business matters that can be confidential could, for example, be information about a new and unknown method of production at a company.

If a piece of information is broadly known in the public sphere, the information will, in some cases, not be covered by the duty of confidentiality, for instance when citizens have themselves made the information public.

Of the *public interests* named in the Public Administration Act are, among others, considerations for:

- The security of the state or the defence of the kingdom.
- The foreign policy interests of the kingdom, including the relationships with other countries and international organisations.
- Prevention, investigation and prosecution of infringements of the law.
- Performing public sector inspections and monitoring activities.
- The financial interests of the public sector.
- Public authorities' internal decision-making processes.

This means that there may be a duty of confidentiality regarding, for example, the design of military installations, a public authority's IT security measures, negotiations in the EU, police investigations, administration inspection and control actions, and contract negotiations with private enterprises etc.

Provisions regarding a heightened duty of confidentiality

Apart from the normal rules governing the duty of confidentiality and those defined in the Public Administration Act, in some cases specific rules may be established based on special considerations that impose a heightened duty of confidentiality.

Normally such rules are limited in their application to specific public authorities and circumstances.

For example, the special rules on the duty of confidentiality for employees in the tax authority.

The duty of confidentiality cannot be expanded by official order

Managers cannot impose by order a broader duty of confidentiality on their employees than that prescribed by the relevant legislation.

This means that managers may not issue instructions, for example, stating that there is a duty of confidentiality with regard to every piece of information that employees come into possession of.

Management may, however, specify -- for example in guidelines -- which information or documents are subject to the rules governing the duty of confidentiality.

Caution when disclosing information

Disclosing confidential personal information to third parties may only take place in a limited number of specific situations, for example when consent has been given by the person the information concerns.

In general, one should exercise caution when disclosing information so as to ensure that the information is only disclosed to the proper parties. This can be done, for example, through verification calls by telephone, where the employee makes sure that the person who has called or written to the public authority is in fact the person who they have said they are.

If a public employee is legally bound to pass on a piece of information, then it is not considered a breach of confidentiality.

Exchanging information between public authorities

At times it can be necessary for administration authorities to exchange information, even though the information is confidential. This can be the case, for example, when a number of different public authorities are cooperating on handling a case. The specific details about the rules governing this situation are found, for instance, in the Public Administration Act and the legislation governing the protection of data.

Normally there is a wider freedom to pass on confidential information to another public authority than to a private party.

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- In general, public employees may tell other people about their work.
 - The rules on the duty of confidentiality set, however, limits on the extent to which employees may disclose information that they have gained access to in connection with their jobs.
 - If a piece of information is private and thus subject to the duty of confidentiality, for example because it involves an individual's private or financial circumstances, the information may not, in general, be passed on to private parties.
 - It is important that public authorities and institutions protect the information that they receive from citizens and that the personal integrity and privacy of citizens are not infringed on.
 - Special rules apply with regard to passing on confidential information to other public authorities.
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5. Impartiality

Introduction

It is a fundamental principle that public employees must both be and appear to be impartial and that they must make decisions and rulings based on objective grounds.

Public employees who make decisions based on considerations that from an objective point of view are irrelevant -- for instance considerations for their own personal or economic interests or those of private friends or acquaintances -- are acting, therefore, in conflict with their official duties.

In order to ensure correct and legal decisions and to avoid suspicion that there may be improper considerations being taken in a specific case, the Public Administration Act specifies that in a number of situations public employees may not be involved in handling particular cases.

It is important to emphasise that the assessment of whether an employee has a conflict of interest is not an assessment of the employee's integrity or abilities. There is, therefore, nothing wrong in having a conflict of interest -- as long as the employee avoids taking part in handling the specific case in question.

The rules governing conflicts of interest are there to help protect employees. They ensure that the employees are not instructed to handle cases when circumstances exist which -- also with regard to the general public -- might raise doubts about the employee's impartiality.

Circumstances which can lead to a conflict of interest

The rules on impartiality can be specifically found in Section 2 of the Public Administration Act. These rules apply when an administrative authority must make a decision or enter into a contract with, for example, a private enterprise. The rules in Section 2 of the Public Administration Act are supplemented by a general fundamental legal principle of impartiality, which covers areas where the Public Administration Act does not apply.

A public employee has a conflict of interest if:

- The employee has a special personal or economic interest in the outcome of a case.
- The employee has a close family connection to a person who has such an interest.

There are other circumstances that might raise doubts about the employee's impartiality, for example because there is a matter of a close friendship -- or the opposite -- with the person the case in question involves.

Whether a specific interest creates a conflict of interest for the employee in a particular case depends on a specific assessment. In order for a conflict of interest to exist, the interest, for example a personal or financial interest, must be of such a nature that it could be assumed that generally seen the interest would lend itself to influencing how the matter was handled. It is thus not important whether the employee or manager judges that in a specific case the employee can keep the irrelevant interest from influencing the case. The decisive issue is whether the interest, generally seen, lends itself to creating doubt about the employee's impartiality.

Example: A municipal caseworker must make a decision as to whether a building permit should be issued to build an additional floor onto a house next to the caseworker's brother's house.

The caseworker would have a conflict of interest. Regardless of what the exact relationship is between the caseworker and the brother, the caseworker must decline to handle the case.

Duty to report

An employee who has a conflict of interest with regard to handling a specific case has a duty to report this to their manager. If the employee is in doubt about their own impartiality, then the manager must also be informed about this doubt so that the issue can be decided.

The employee may not take part in handling the matter or in determining the outcome of the question of their own impartiality.

The consequences of having a conflict of interest

If a public employee has a conflict of interest with regard to a case matter, the employee may not make decisions in the matter, participate in decisions, or in other ways take part in handling the case in question.

The practical consequences of the fact that a conflict of interest exists with regard to a particular case will typically be that the matter is transferred to a colleague.

A public authority with a conflict of interest

A public authority as such can also find itself in a conflict of interest or other type of situation where there is a risk of a lack of trust that the authority's decision will be influenced by subjective considerations. This is called a conflict of interest in the public administration.

The requirement of impartiality that applies to public authorities is based on the same considerations as those that lie behind the rules of personal impartiality.

If a public authority has a conflict of interest, consideration should be given as to whether it is possible to transfer the matter to another lateral authority or to a superior authority.

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- The rules on impartiality are important both for protecting the employees themselves and for ensuring the public's trust in the public sector.
 - An employee may not participate in handling a case if that employee – or their family – is, for example, a party in the case or otherwise has a special personal or financial interest in the outcome of the case.
 - Employees must notify management if doubt can arise about their impartiality with regard to a specific case.
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6. Gifts and other benefits

Introduction

As a clear basic principle, public employees are not allowed to accept gifts or other benefits from citizens or enterprises in connection with their work.

The concept of gifts and other benefits must be understood in a broad sense, covering both physical items, such as chocolate, wine and books, and non-physical items, such as offers of discounts, paid travel, courses or meals. Monetary gifts, such as legacies from wills, would also fall into this category.

This section reviews examples of gifts and other benefits as well as the exceptional situations in which they can be accepted. Common for all the examples mentioned in this section is that – regardless of the gift's value and the motive behind the gift – the gifts are offered to the particular employee by virtue of their position in the public sector. The giver of the gift could be a citizen, a private enterprise, a special interest organisation or another third party.

Gifts and other benefits given within the workplace to the employee fall outside the scope of the description in this section. This could, for example, be a contribution from the management towards subsidising a summer party or a Christmas gift.

The individual workplace could benefit from determining themselves the rules governing acceptance of gifts described in this section. A workplace could, for example, lay down guidelines that employees responsible for purchasing equipment and services for the public authority are *never* allowed to accept gifts or other benefits from private entities. A workplace could also determine a maximum threshold for how expensive a wine gift an employee is allowed to accept in connection with delivering presentations as part of their official duties. If the particular workplace sets out stricter guidelines than those described in this section, its employees must observe these guidelines.

Legal basis

According to Section 144 of the Danish Criminal Code, public employees who accept bribes shall be liable to a fine or imprisonment. The rules are described in the Ministry of Justice's guidelines, "How to avoid corruption."

Otherwise, there exists no general legislation that explicitly regulates the ability of public employees to accept gifts and other benefits in connection with their work. Instead, the relationship is regulated by standard principles of administrative law. In certain areas, however, specific rules can be laid down. For example, there are rules governing public healthcare workers' acceptance of financial benefits in connection with advertising of medicinal products and medical devices.

The principles of administrative law governing acceptance of gifts and other benefits must, in the same way as the rules governing impartiality, prevent and forestall situations from arising where doubts can be raised about the employee's objectivity and impartiality in the performance of their duties. The rules are thus also designed to protect public employees.

In general, the principles aim to help ensure the population's trust and confidence in public authorities.

As mentioned, stricter rules may also be laid down at the individual workplace. If so, the particular employees must observe these guidelines.

Basic principle

As a clear basic principle, public employees are not allowed to accept gifts or other benefits from citizens or enterprises that they are offered in connection with their work.

An employee who is offered a gift or a benefit by an individual or an enterprise should thus refrain from accepting it if it relates to the employee's public office or function. This applies both in cases where the giver of the gift is a party or has been a party in a case handled by the particular public authority and in cases where the giver has not previously had a case handled by the public authority.

Exceptional situations where gifts or other benefits can be accepted

In certain cases, gifts or other benefits can be accepted in exceptional situations. Whether a gift or another benefit should be declined or whether it can be accepted in exceptional situations depends on the nature of the gift or the benefit and the context in which it is offered. It is not possible to specify, for example, a minimum value threshold below which employees can accept a gift. Under any circumstances, an individual assessment must be made of whether a gift or a benefit falls within the scope of the very limited number of exceptions which permit acceptance.

The individual assessment can include the following considerations, with different weight attached to them depending on the case:

- What is the giver's relationship to the public employee and the employee's workplace?
- Does it relate to a gift or benefit that is offered to the employee by virtue of their position as a public employee?
- Does the giver expect a return service from the employee, or could acceptance of the gift or benefit raise such an expectation?
- Does the gift or benefit have a modest financial value?
- Could accepting the gift or benefit compromise the employee's ability to perform their duties – e.g. instil a sense of indebtedness on the part of the employee?
- Could the employee's impartiality be questioned if they accept the gift or benefit?

In connection with invitations to events, etc., such as a lunch, it might furthermore be considered whether this invitation was a natural part of a collaborative relationship, whether there is a professional purpose behind participating in the event, and whether the professional pur-

pose constitutes the primary focus of the event. In this respect, the event's nature, scope, target group and the employee's duties and position could have importance.

It may be relevant to consider whether participating in an event or similar could give rise to future issues, for example based on the view that public authorities must not only be, but must *be seen to be*, neutral towards an enterprise and its competitors.

Employees are recommended to discuss the matter with their manager if in any doubt.

The following subsection describes examples of gifts and benefits that should either be declined or which, in exceptional circumstances, could be accepted. The examples could be used as inspiration for how to respond to offers of gifts.

The examples are divided into 1) actual gifts, 2) participation in events, courses, paid travel, etc., and 3) other benefits.

Examples

1) Actual gifts

General rule

The general rule that public employees are not allowed to accept gifts or other benefits in connection with their work also applies in situations where the giver does not have a case pending with the public authority or has not had a case handled by the public authority.

Example: A municipal employee accepts – perhaps together with a number of other staff in the local authority – a modest gift from an enterprise, even though the enterprise has not (yet) had cases handled by the local authority.

The gift must be returned.

Recognition of excellent work

As a general rule, public employees are not allowed to accept gifts, etc. that are offered as an expression of the giver's satisfaction with, for example, the service level, the handling of a case or the outcome of a specific case.

Example: An enterprise has won a public tender contract with a local authority and in gratitude a number of municipal employees receive a basket containing wine and chocolate.

The public employees must not accept the gift.

"Gifts of gratitude"

Employees are permitted to accept modest "gifts of gratitude" in special cases when it could appear impolite and disappoint the giver if the gift was returned. This applies particularly

where there is a personal relationship between the giver and the receiver. It could apply to, for example, staff working in a care home or a daycare centre.

Example: The parents of a child give a box of chocolates to the staff in connection with their child's last day at the daycare centre.

Example: On being discharged from the hospital, a patient presents a bouquet of flowers to the staff.

In general, the staff in these cases would be able to accept the gift out of consideration for the citizen. These are modest gifts of gratitude for a service of personal nature for the citizen or for a relationship between the citizen and the staff member who has shown a personal touch.

Special occasion gifts, etc.

Public employees are permitted to accept standard modest gifts from citizens or enterprises to mark a special occasion of a personal nature, such as special birthdays, anniversaries or farewell receptions.

Example: At a reception to celebrate an employee's 25th anniversary, an enterprise that the employee has had regular business relations wishes to give the employee an appropriate gift, such as a book or a wine gift.

The employee can accept such a gift.

In addition, in connection with festive periods such as Christmas or New Year, employees are permitted to accept very modest gifts from citizens and enterprises, etc. with whom they have an established working relationship.

Example: An enterprise which during the year has collaborated with certain employees of an agency sends a box of chocolates to these employees at Christmas time.

Example: A resident of a care home asks his daughter each year to buy a box of chocolates for the staff as a Christmas gift.

The gifts can be accepted.

When accepting gifts to mark a special occasion, the employee must be aware of whether the gift in reality reflects a recognition of excellent work, or whether it relates specifically to circumstances that may raise doubts about the employee's impartiality.

Gifts offered to hosts

It is normal custom for public employees to be able to accept small gifts from, for example, foreign visitors who are on an official visit (gifts offered to hosts). Similarly, public employees are permitted to accept similar gifts from the host country in connection with public employees' official visits abroad.

Example: An employee of a ministry that receives a delegation from a foreign public authority is given a small gift, such as a book on the particular country.

The employee can accept the gift.

It will be up to the respective public authority to decide whether and to what extent accepted gifts must be registered.

Inheritance

Inheritance that is bequeathed to public employees solely by virtue of their official function must not be accepted.

Gifts in connection with presentations, lectures and similar appearances

Public employees often acquire substantial knowledge about a particular subject within their professional field, and it is therefore natural that they will find themselves being invited to give lectures or presentations.

Example: An employee is invited as part of their official function to give a lecture or presentation to a private organisation and afterwards accepts 2-3 bottles of wines in gratitude.

In general, such appreciation can be accepted. This is standard practice.

The employee must, however, be careful to check that the appreciation has only modest financial value. If it does not, the employee is not allowed to accept it.

Public employees also need to be particularly careful if they are invited to give a presentation for someone who has a case pending with the public authority which the employee represents. If even a modest gift of appreciation for a presentation raises uncertainty about the employee's impartiality, it should be declined.

If the employee gives a lecture or presentation outside their official capacity, this may be regarded as secondary employment. In this regard, the employee will not be accepting a potential fee or other compensation by virtue of their role as a public official. If the employee is in doubt about the nature of the lecture and whether they can accept a fee or other compensation, they should consult their immediate superior for advice.

For further information on secondary employment, refer to section 7.

2) Participation in events, courses, paid travel, etc.

Public cultural events

As a general rule, public employees should not participate in public cultural events, etc. paid for by citizens or private enterprises if the invitation to the event is triggered by the public

employee's office or function. This covers, for examples, offers of free tickets to concerts, sports events or similar, and it applies regardless of whether the timing of the event lies adjacent to a work-related activity or event.

Example: After signing a contract, an IT provider sends admission tickets to a rock concert to the managers and employees involved in the contract negotiations.

Example: A number of managers in a public authority each accept a seasonal pass to an amusement park from an enterprise with whom they have cooperative relations.

In both cases, the gifts would need to be returned.

Courses

Courses have a financial value and can constitute a benefit for the receiver. Therefore, public employees should be cautious about participating in courses paid for by others than the employees themselves or their employer.

In connection with choosing a course provider, there is nothing to prevent an employee of a public authority from participating during courses, etc. insofar as it is necessary to evaluate their relevance and quality, etc.

Paid travel

Public employees are not allowed to accept gifts in the form of travel paid by private individuals or enterprises if the gift is triggered by the particular employee's public office or function.

As a representative of the public authority

Some public employees experience being invited to events organised by private enterprises in which the employee's participation serves a representative purpose. Participation in this case would in general be unproblematic.

Generally, this covers major and typically well-publicised events, such as an enterprise's anniversary or an annual meeting of a special interest organisation. Such events are, among other things, not normally targeted at individual public employees or their workplace.

Public employees can also participate in such events even if the event – perhaps exclusively – consists of, for example, a lunch or a cultural performance. It will naturally be a precondition that the public employee has a position or function that allows for the possibility (and obligation) to appear on the public authority's behalf and that the participation has a genuine work-related relevance.

Example: A public employee whose position lends itself to representing the public authority outwardly is invited in a representative capacity to attend an open cultural event with light food and refreshments in connection with a private enterprise's anniversary.

Example: A group of managers and employees are invited to an annually held dinner held by an employers' organisation, a personnel organisation or a special interest organisation.

Invitations of this nature can normally be accepted.

A public employee should, however, not participate in events that are clearly disproportionate in scale.

Example: A public employee is invited in a representative capacity to attend an exclusive event involving a meal at a gourmet restaurant in connection with a private enterprise's anniversary celebration.

Invitations of this nature can normally not be accepted.

Events and accompanying persons

As a general rule, public employees who as part of their official duties participate in an event paid for by a private enterprise are not allowed to bring an accompanying person to the event – unless the public employee pays for the person's participation. This applies also even though private company employees may have brought an accompanying person.

An employee may, however, in certain special cases bring an accompanying person without paying separately for them. This could, for example, be the case in connection with events where the public employee's participation serves a representative purpose and where it would subsequently be natural to bring an accompanying person.

Meetings, etc. with special interest organisations and private enterprises

Public employees may in certain cases accept a meal, etc. paid for by a special interest organisation or a private company in connection with, for example, a meeting or the end of a project.

As such events in practice would typically be targeted at public employees or their workplace, there is a special need to check that the event is not disproportionate in scale.

It is also important to ensure that the invitation could not be perceived as a sign of gratitude for a decision that the public authority has made or is expected to make.

Example: Some employees from a public authority are paying a visit to an enterprise with whom the public authority has had regular cooperation over a number of years. The enterprise offers the employees a meal in the enterprise's canteen.

Invitations of this nature can normally be accepted.

Example: As a way of marking the completion of a lengthy project between some union organisations and a public authority, the union organisations

invite the employees of the public authority to a dinner.

Invitations of this nature can normally be accepted.

There is particular reason to be cautious if the invitation stems from a private enterprise with a commercial interest in meeting with the public employee.

Example: After a brief customer meeting on establishing a collaboration with a public authority, the enterprise offers to give the public authority's employees a luxurious lunch at a prestigious gourmet restaurant.

Invitations of this nature must not be accepted.

Example: A private enterprise that has assisted a public authority in processing a large volume of cases invites the employees of the public authority that the enterprise has collaborated with out to eat at a restaurant to mark the end of the project.

Invitations of this nature must not be accepted.

If in doubt, a potential solution could be to allow the particular public authority to cover the cost, provided the relevant budgetary appropriations allow provision for this use of funds.

Meals and refreshments in connection with professional events

When public employees participate in professional events, such as conferences and similar, an integral element of this event could involve a lunch, dinner or similar meal or a cultural performance.

Public employees have wide scope for being able to accept or participate in a cultural performance when it forms an integral part of a professional event. A public employee should, however, not accept lunches, dinners, etc. that are disproportionate in scale.

Example: A group of employees in a department participate in a conference on management and leadership in the public sector. During the programme, a meal is served as well as fruit and beverages.

The employees can accept such meals and refreshments.

When there is any doubt, the public employee can place emphasis on whether the professional event is targeted at the particular public employee or their workplace or whether it relates to an event that is open to a wider circle of participants.

Example: A number of specially selected public sector managers are invited to a free event with a professional content which includes exclusive dining and entertainment.

The managers should not attend such an event if the entertainment and

meals overshadow the professional purpose.

The broader the event, the more is needed before, for example, a lunch should raise doubt about the particular public employee's impartiality.

Official duties and responsibilities (supervision, etc.)

There may be cases where there is a connection between an employee's official duties and responsibilities and a specific event where the particular employee's free access to the event cannot be regarded as a gift or other benefit.

This comprises, for example, situations where a public authority is required to monitor compliance with legislation or contractual obligations, or where participation in the event is a relevant part of handling a specific case.

Example: A number of employees in an agency are in contract negotiations with a private enterprise, as the agency is considering leasing office space from the enterprise. The enterprise holds a cultural event in the office space under discussion. The employees' participation is necessary to check out the possible options for using this space.

The employees' participation in the event is solely rooted in their official duties and responsibilities. They may therefore participate in the event. On the other hand, the employees would not be allowed to bring an accompanying person with them to the event unless this person paid for their own participation.

3) Other benefits

Prizes

Prizes won in competitions can in some cases resemble gifts, and public employees must therefore be cautious about accepting them if their participation in the competition is connected to their function as a public official. Prizes can take the form of physical items, courses and discount schemes.

Example: Each year, a central government authority holds a conference that is co-financed by private suppliers who have also set up stands at the conference venue. At some of these stands, prizes can be won by participants from both the private and the public sector.

Public employees should refrain from participating in such competitions if (major) prizes donated by the suppliers can be won.

The reason is that public employees should not put themselves in a situation where there could arise suspicion of favouritism. This viewpoint is strengthened the closer the public employee is to the decision-making process regarding choice of supplier.

Discounts and optional extras

Public employees who are involved in purchasing goods and services for the public sector should not make private purchases from suppliers, etc. at discount prices or under other favourable terms if the discount is offered to the employee by virtue of their employment relationship.

Example: A telecom provider delivering internet connections (employee broadband) makes an offer in connection with delivery to a public authority that the employees involved can privately purchase extra services at a discount, such as additional TV channels.

The discount is offered to the employees by virtue of their employment in the public sector and in connection with the public authority having employee broadband delivered by the provider. The discount would be regarded as a gift that should be declined.

On the other hand, there would be nothing to prevent the employee as a private individual from purchasing services at the normal price charged to other private individuals, as there would not be any gift element.

In addition, there is normally nothing to prevent the public employee from privately making use of general discounts, etc. offered to all employees of a public authority or as part of membership of a staff association, union organisation or similar. An element in the assessment is whether the discount in terms of content and nature is normally available.

Example: A restaurant offers all staff at a number of enterprises and public authorities in the local area 15 per cent discount on take-aways during lunch hours.

Public employees can normally make use of such a discount.

Employees paying for themselves

If the public employee personally pays an amount corresponding to the value of a gift or a benefit, it does not normally raise questions about whether the standard principles of administrative law are being observed, as there is no gift element.

The employee should, however, be aware of whether their function as a public official gives them another benefit than a financial gain, and if so, whether they should nevertheless refrain from accepting the gift or benefit.

Example: An enterprise offers an employee of an agency with whom the enterprise has regular cooperation the opportunity to buy a VIP ticket to a concert that is otherwise sold out.

The employee should not accept the benefit.

Gifts to the public authority

A public authority may, to a certain extent, accept gifts if the gift is intended for the authority as an institution and not the authority's employees as individuals. Within central government, this principle is described in the Finance Ministry's budget guidelines. Similarly, municipalities and regions are able in certain circumstances to accept gifts for use in performing their tasks and duties.

Example: A private foundation pays for the installation of a climbing frame at a daycare centre.

Example: A private foundation donates a sculpture to a local government authority for display in a public space.

As a general rule, the local government authority is allowed to accept the above gifts, as they represent in reality a gift to the residents of the municipality and not the local government authority's employees.

The public authority must be careful to make sure that the standard principles of administrative law are also observed in connection with the acceptance of gifts by public authorities.

A gift to a public authority which in reality benefits its employees is to be handled in accordance with the principles governing the acceptance of gifts by public employees.

A gift to an employee of a public authority that is deemed to breach the abovementioned principles will not be acceptable simply because the employee chooses to share the gift with their colleagues or because the public authority had adopted guidelines that the employee must share the gift.

Example: An enterprise sends a local government authority a box of chocolates as an expression of gratitude for giving planning permission.

The local government authority should not accept the gift.

- Public employees should in general be very cautious about accepting gifts or other benefits in connection with their work.
- Public employees must naturally not accept gifts or other benefits that resemble bribery. This would be in violation of the Danish Criminal Code.
- Public employees are allowed, however, to accept a gift in a few situations. For example, public employees can in special cases accept small gifts from private individuals or enterprises in connection with events of a personal nature, such as special birthdays, anniversaries or farewell receptions. Public employees can also accept modest gifts of gratitude in special cases where it would appear impolite or it would cause disappointment to the giver if the gift was returned.
- Individual workplaces may have stricter rules in place and these must be observed by their employees.
- It is recommended that employees who are in any doubt should discuss the matter with their immediate superior.
- If the employee is still in doubt as to whether the gift can be accepted, the gift should be declined

7. Secondary employment

Introduction

As a rule, public employees are entitled to have other employment alongside their main job.

Secondary employment can benefit both the employee and the primary workplace because it enables employees to broaden their knowledge and widen their interface with the general public. At the same time, the visibility of public employees in the surrounding community can help strengthen citizens' knowledge and trust in the public sector.

Secondary employment can both be salaried or unsalaried, and can, for example, take the form of teaching work, a position on the board of a company, social work or another kind of voluntary occupation.

In the vast majority of cases, it will be quite unproblematic for public employees to have other employment alongside their normal job.

Secondary employment must, however, take place within certain parameters.

Parameters for secondary employment

Secondary employment must be compatible with the public employee's official duties. This is stipulated for civil servants in Section 17 of the Civil Servants Act, although the principle applies to all public employees. In other words, it also applies for employees who are subject to the terms and conditions of a collective agreement.

A similar provision is found in Section 15 of the Salaried Employees Act, which stipulates that a salaried employee is entitled to perform duties outside the service, provided performance of the duties does not cause inconvenience to the enterprise.

The Civil Servants Act – Section 17

" A civil servant may solely have other employment than his/her position as a civil servant insofar as and to the extent that this is compatible with the conscientious performance of the official duties of the position as a civil servant and with the esteem and trust required by this position."

The Salaried Employees Act – Section 15

" A salaried employee shall be entitled to perform duties outside the service without the employer's consent, provided that such duties may be performed without any interference to the enterprise."

This means that the secondary employment

- Must not pose a potential conflict of interest in relation to the primary occupation,
- Must not require too much of the employee's labour input, and
- Must not conflict with the dignity requirement (see section 8 on duties, liability and rights).

As a general rule, employees who undertake secondary employment are not obliged to report this to the appointing public authority. The appointing public authority is also in general unable to forbid employees from undertaking secondary employment without prior permission from the authority.

Within certain areas, however, there may be rules governing secondary employment. There might be rules, for example, stating:

- That certain employees – e.g. executive managers or key personnel – are generally not allowed to engage in a certain type of secondary employment,
- Under what conditions any secondary occupation can be undertaken, or
- That the employees are required to inform the appointing public authority about an intention to undertake secondary employment.

The Ministry of Finance has laid down rules requiring certain senior officials on pay grade 38 and above to report secondary employment, and the regions have an agreement in place obliging doctors to inform of secondary employment undertaken.

In addition, the employee must provide information about secondary employment if requested by the appointing public authority and if warranted on objective grounds.

It should be noted that the employee is always able to discuss with the management of the public authority where they have their primary employment if they are in doubt as to whether envisaged or current secondary employment is acceptable.

In general, it is not vital whether the secondary employment takes place inside or outside the public sector. Secondary employment undertaken in the private sector can, however, in certain cases be more problematic than secondary employment within the public sector, partly because it might pose a potential conflict of interest.

The risk of conflicts of interest could, for example, arise if an employee has secondary employment in a private enterprise that needs to obtain approvals, etc. from the public authority where the employee works.

Managerial employees sitting on boards in private companies could also pose a potential conflict of interest.

If the appointing public authority following an individual assessment of the type and content of the primary and secondary employment believes that the secondary employment is incompatible with the employee's official duties, the public authority can instruct the employee not to undertake the intended or current secondary employment.

- Public employees can undertake secondary employment both in the public and the private sector alongside their normal job.
- The secondary employment must, however, be compatible with the discharge of the employee's official duties and must, for example, not pose a potential conflict of interest.
- Within specific areas, there may be special rules governing secondary employment, including rules that certain types of secondary employment must be reported to the appointing public authority.

8. Duties, liability and rights

Duties

Public employees must comply with the rules and principles that apply to the respective position and the performance of tasks and duties. Public employees are also expected both on duty and off duty to conduct themselves in a way that is appropriate for their position.

The requirements to the conduct of public employees derive from the Civil Servants Act and they apply to all public employees. This means that the requirements also apply to staff employed under the terms and conditions of a collective agreement.

The Civil Servants Act – Section 10

"The civil servant must conscientiously comply with the rules that apply to his position, and both on and off duty prove themselves worthy of the esteem and trust required by the position."

The rules applicable to the position

The requirement that employees are required to comply with the rules that apply to their position entails that employees must act in accordance with governing legislation in general when performing their duties.

For example, social workers in their work need to be aware of the rules laid down in the Social Services Act, etc, while nurses in their work must act in accordance with the rules laid down in the Health Act, etc.

In addition, there may be guidelines laid down at the individual workplace on the execution, etc. of the work which the employee must be aware of and comply with.

The requirements also target the duties associated with the employment itself. This entails, among other things, that the employee has a duty to perform their work in accordance with the interests of the workplace, and that the employee must contribute to implementing the tasks, strategies and goals set out by the management.

The dignity requirement

The requirement that public employees both on duty and off duty must conduct themselves in a way that is appropriate for the position is also known as the dignity requirement or the decorum requirement.

As a general rule, a disregard for the dignity requirement will constitute a breach of duty.

The specifics of the requirement are assessed on the basis of the employee's position and the general moral perception of society.

The dignity requirement relates to the esteem and trust vested in the employee's position. Therefore, the assessment may include, for example, whether it concerns:

- A key position – e.g. a position with financial responsibility
- A position with a duty of care for citizens
- A senior position.

A criminal offence may be – although not in all cases – incompatible with the position, but it can also apply to other acts or omissions. The employer can also make clear the requirements to the employee's conduct by stipulating that a certain type of conduct is expected in the particular position.

Liability

Breaches of duty

As a general rule, employees who fail to comply with rules applicable to their position are considered to be in breach of duty.

Often, it will be possible to clarify whether it relates to non-compliance with the rules through discussion of the issue between the employee and the employer, or by the employer explaining how the rules are to be understood. By virtue of their managerial prerogative, the employer has the right to plan and allocate the work.

It does not constitute a breach of duty if the employee is unable to deliver the work performance that is generally required in the position (due to inadequate capability) or due to relationship difficulties with colleagues at the workplace.

In cases of serious breaches of duty – e.g. a refusal to perform assigned tasks and duties - the employer may choose to impose a sanction on the employee. This could, for example, take the form of a reprimand or dismissal. In particularly serious breaches, the employee can be summarily dismissed, resulting in the employment relationship being terminated with immediate effect.

The employer must react as quickly as possible after becoming aware of and obtaining clarification of a breach of duty if the employer wishes to bring an employment law liability action. While the employer investigates the matter, the employee can, if necessary, be relieved of service or transferred to other duties.

For civil servants, the Civil Servants Act contains specific rules governing sanctions for breaches of duty and the procedures for dealing with such cases.

Expiry of employment law liability

There are no rules governing expiry of employment law liability. In principle, this liability never expires.

It does, however, matter how much time has passed since the breach of duty was committed. If a long period of time has passed, it may be impossible to hold the employee liable or it may lead to a milder sanction being imposed than would otherwise have been the case. Normally, there must be special reasons, such as very serious breaches of duty, if the employee is to be held liable for breaches of duty that took place more than five years earlier.

Is the employee always required to speak the truth?

If the appointing authority wishes to hold the employee liable, questions can arise during the case regarding to what extent the employee is obliged to speak and whether the employee is obliged to speak the truth.

As a general rule, public employees are required to give relevant information about their service-related duties and responsibilities to, among others, their superior, and this information must not be incorrect or misleading.

According to the practice of the Parliamentary Ombudsman, the employee will, however, be able to refuse to give information to their superiors during a disciplinary case that could lead to heavier sanctions imposed on the employee. The Civil Servants Act and the Commissions of Inquiry Act also contain specific rules on the employee's right to remain silent when there is a risk that the employee could incur disciplinary liability by giving evidence.

If the employee chooses to waive their right not to speak, the employee is obliged to tell the truth. This does not apply, however, if it relates to a criminal offence (see below under criminal liability).

Criminal liability

In the Danish Criminal Code, there are special rules governing criminal liability for offences committed by public officials or persons responsible for delivery of public service. The rules focus on, among other things, acceptance of bribes, violation of a non-disclosure agreement, abuse of position and gross negligence.

Criminal liability will normally only be invoked in connection with very serious breaches of duty. Such cases are handed over to the police for investigation and settled in the courts.

Inaccurate information and crude accusations

Public employees are allowed to express critical opinions about conditions at the workplace if there is reason to do so. However, public employees are not allowed to voice their views in an unreasonably crude way, and they are not allowed to make evidently inaccurate information about significant aspects relating to their own working field.

See also section 3 on public employees' freedom of expression.

Rights

The fundamental rules governing the conduct of public authorities and employees towards citizens also apply to the relationship between the appointing authority and the employee.

If an employer wishes to impose a disciplinary sanction on an employee, the employer must be aware of the rules laid down in the Public Administration Act on, among other things, hearing of parties and giving of grounds as well as the employee's right to have a support person present, such as a union representative.

There also apply a number of core principles of administrative law. The proportionality principle entails, for example, the need for there to be a reasonable balance between what happened and the reaction towards the employee. An employee who disagrees with a sanction can seek advice about their options from the union representative, the employee's union organisation (if a member) or a lawyer.

If an employee is dismissed, there are, depending on the employment basis, various options for pursuing the matter. The employee's union organisation can, for example, require that the dismissal be considered by a dismissals board if the relevant collective agreement contains provision for such action.

- Public employees are required to comply with the rules applicable to their position. Public employees are also expected both on duty and off duty to conduct themselves in a way that is appropriate for their position.
- As a rule, an employee who fails to comply with the rules applicable to their position is in breach of duty.
- The fundamental rules governing the conduct of public authorities and employees towards citizens also applies to the relationship between the appointing authority and the employee. This means, among other things, that the provisions in the Public Administration Act on hearing of parties, giving of grounds and the right to have a support person present apply.

9. Sound financial management

Introduction

The Ministry of Finance budget guidelines stipulate that central government authorities must use their appropriations for the purposes for which they have been allocated and exercise due financial consideration in their management of expenditure and income. In this way, the public authorities must ensure that they exercise sound financial management. The principle of sound financial management also applies within the regional and municipal sphere.

Public authorities and institutions must thus use their financial resources in accordance with the political priorities and the purposes for which they have been designated. At the same time, it is important that the institutions use the resources in the best possible way. Public authorities and institutions also have responsibility for ensuring that appropriate follow-up on the budgets regularly takes place and for instigating measures that can counter any risk of overrunning the allocated appropriations.

In practice, this means that public authorities and institutions must use the financial resources as efficiently as possible and avoid unnecessary expenditure. In the municipalities, the respective municipality's regulation on budget and accounts typically contains rules governing financial management, including requirements regarding financial soundness, bookkeeping, documentation, etc. Similar regulations are found in the regions.

It is the management which has overall responsibility for ensuring that the particular public authority fulfils the requirement of sound financial management.

The requirement has, however, also importance for the public authority's employees, as the management may have drawn up descriptions or instructions for how the employees are to act in a financially sound manner in a certain situation – e.g. in connection with making purchases for the authority. Based on the regard for sound financial management, there may be legislative requirements specified in legislation, etc. which the employee must comply with in their work.

This is, for example, the case with public procurement rules, in which public authorities are obliged to ensure efficient procurement.

All public authorities and institutions' accounts are audited. The audit also comprises a so-called performance audit, where the accounts are examined to see whether due financial consideration has been exercised in connection with the use of resources, i.e. whether the public authorities have delivered economy in their administrative practice, delivered productivity and delivered efficiency in their use of resources.

In the following subsection, examples are given of a number of areas where public employees encounter the requirement of sound financial management.

Representation expenses

Representation expenses refers to outward costs borne by a public authority or institution with the aim of, for example, promoting the authority's interests or maintaining relations.

Representation expenses will typically comprise:

- Restaurant bills
- Canteen bills
- Flowers and wreaths
- Small gifts in connection with anniversaries, etc.

Representation expenses must have a purpose that is relevant for the public authority's area of responsibility and service delivery, and the expenses must not go beyond this designated purpose. This implies, among other things, that there must be a reasonable balance between the expense, the purpose and the participant group. The individual authority may lay down internal rules governing the maximum cost per envelope, management approval, etc.

Purchasing and sale

The requirement to exercise sound financial management entails that it must always be considered whether a purchase is necessary and that purchases are made under market conditions.

In connection with purchasing goods, services, etc. for a public authority, the rules laid down in the Public Procurement Act and the Public Tenders Act must be observed. According to these rules, a purchase may be subject to a compulsory call for tender or a requirement to conduct market consultations, etc. In addition, central government authorities and institutions must observe the rules set out in the Finance Ministry's circular on purchasing of goods and services by the public sector and the circular on awarding of public contracts.

The rules governing the compulsory call for tender, etc. partly aim to ensure the best possible use of public funds and thus contribute to facilitating sound financial management. As a general rule, the requirement of sound financial management can thus be viewed as being met if the above rules are observed.

The circular on purchasing of goods and services by the public sector stipulates, among other things, that central government institutions are obliged to use binding joint government purchasing agreements that have been entered into between the Danish Agency for Modernisation and National Procurement Ltd (SKI). The circular also contains rules governing the so-called cascade model, which generally requires central government institutions to use SKI's voluntary agreements and other voluntary agreements already established if the purchasing need can be met by these agreements and the purchase is not subject to a binding agreement.

The circular on awarding of public contracts contains rules that central government institutions are to review their task portfolio at regular intervals in order to identify tasks that are suitable for putting out to competitive tender. Tasks identified as suitable for putting out to competitive tender must be exposed to competition or market assessment at regular intervals. If after taking all factors into account, the particular task is to be put out to competitive tender if this is deemed to be the most beneficial solution for the central government authority.

All regions have adopted a procurement policy that defines the parameters for their purchases as well as a “Joint Procurement Strategy 2015-2020”. The joint procurement has been formalised in the Regions Joint Procurement (RFI), which is a binding cooperation model where a single region carries out procurement on behalf of the other regions.

The municipalities use a number of framework agreements on procurement that are often concluded within the sphere of local government procurement consortia, SKI, etc. At the same time, a joint local government procurement strategy and a joint local government action plan on procurement for 2017-2020 have been prepared.

The requirement of sound financial management also applies in cases where a public authority sells assets, such as furniture, or has authorisation to sell services. The sale of both assets and services will need to take place at market price, factoring in all relevant costs. In certain cases, the sale of assets, etc. may require special authorisation and there may be special rules governing pricing.

Official travel, etc.

Travel, including study trips and transport to courses, etc. that is undertaken as part of an employee’s official duties must have the appropriate professional purpose and the expenses must be reasonable. Special rules exist governing coverage of expenses in connection with official travel, including hotel rates, hourly and per diem rates as well as rules on allowances for meals, etc.

The rules governing official travel within central government are laid down by the Ministry of Finance. Within the municipal and regional sphere, rules governing allowances in connection with official travel can be determined by the respective workplace, although the central government’s rules are widely adopted.

Documentation

Public employees must be aware of the rules governing documentation of expenses in connection with handling invoices, receipts, etc.

This entails that expenses incurred by a public authority or institution must be documented, and the purpose of the expense must be recorded.

Other aspects of relevance for subsequent checks and control measures, including performance audits – e.g. obtaining several offers prior to purchase - should be documented.

- Public authorities and institutions must fulfil the requirement of sound financial management.
- Public authorities and institutions must demonstrate efficiency in their use of resources.
- Public authorities and institutions can prepare their own descriptions and instructions for employees on financial management procedures.

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