

OFF-DUTY EMPLOYMENT



**Office of the Staff Judge
Advocate
Eielson AFB, Alaska**

354 FW/JA
Legal Assistance & Preventive
Law
Pamphlet Series

INTRODUCTION

Is the high cost of living in Alaska causing you to consider a second or even third job? It's common to see members of the Eielson community working in any number of off-duty employments, both on and off base.

PRIMARY DUTIES

While it may seem like everyone has some sort of off-duty employment, the first thing to remember is that your Air Force job comes first. If you fail your Air Force duties in any way, you may be subject to disciplinary action.

Off-duty employment must be approved by your superior and pass legal review. Jobs that involve a conflict with the Air Force or that bring discredit upon the Air Force will not be approved. For example, an Airman who is disciplined for falling asleep on the duty claiming to be working off-duty; not only would they be subject to disciplinary action for dereliction of duty, but also for failure to obey the regulation requiring permission to work off-duty.

Some things to consider when deciding what type of off-duty employment to apply for:

- How many hours per week would you be working?
- Do the hours interfere with your normal/expected military duty hours?
- Travel time and gas money to and from your off-duty employment.
- Who would you be working for? Could the company present a conflict with the Air Force, your military duties; or bring discredit upon the armed forces?

COVENANT NOT TO COMPETE

If your new employer asks you to sign an employment contract, be aware; these may include a *covenant not to compete*, which is an inherent conflict with the Air Force.

These covenants (promises) protect the employer from having to compete with a former employee after the employee has had extensive contact with the employer's clientele and business secrets. In many instances, the employer has invested heavily in training the employee -- either on the job or by helping pay for education. Normally, these agreements are only an issue if the employee's skills are unique enough to merit special protection. A high school student behind the counter at the local ice cream parlor probably would not have to worry; however, a computer programmer, lawyer, mechanic, or beautician may be held to such an agreement.

An example: Dentist Jones joins the "Filling's Family Dental Practice" in Fairbanks. The contract Jones signs includes this clause: "Upon the voluntary or involuntary termination of Jones's employment with Filling's Family Dental Practice, he agrees not to establish his own practice or to join another dental practice within 15 miles of the Fairbanks North Star Borough limits for three years."

After signing the employment contract, if Jones is fired, or is an excellent dentist but is unhappy with the Filling's Family Dental Practice, he must abide by the contract. Jones cannot work for another practice or start his own practice within 15 miles for a three year period. If Jones does, Filling's could hold Jones liable for any losses suffered while competing with Jones.

Alaska law required an employer to be reasonable. The covenants typically limit the duration (when) and space (where) in which former employees may work or start their own business after the job with the employer ends. The law is more likely not to uphold a covenant not to compete if it is the only or primary means of supporting self and family in a profession and gain meaningful employment.

CONCLUSION

Air Force members must complete an off-duty employment form (AF IMT 3902), have it reviewed by their supervisor and the Legal Office, and request that their commander approve it. If you have any questions relating to this pamphlet, please call us at 377-4114.

This pamphlet is for basic information on off-duty employment. It is not intended to take the place of legal advice from a Judge Advocate. There may be important exceptions in some states to the information presented here. Please contact the 354th Fighter Wing Legal Office for questions and further information.

