

SUBJECT: ESTABLISHING A NEXUS BETWEEN OFF-DUTY BEHAVIOR AND THE JOB

This process is intended to facilitate fair and equitable treatment of employees while balancing the legitimate interests of the State in protecting property and the safety and welfare of other employees and the public. An employee's off-duty conduct may affect that employee's ability to effectively and efficiently perform the duties of their job. This connection between an employee's off-duty conduct and their job is known as a nexus. In considering whether an employee's off-duty conduct has a nexus to their job, an analysis must be undertaken by the employing agency. Decisions must be considered on a case-by-case basis.

To determine whether an employee's off-duty conduct may legitimately be considered as affecting their ability to perform their job (that is: is there a nexus to the job?), the following factors must be considered:

- 1) Does the off-duty conduct relate to a bona fide occupational requirement or is it reasonably and rationally related to the employee's employment activities and responsibilities? Does the off-duty conduct adversely affect the mission of the agency or the purpose of the employee's position?
- 2) Does the off-duty conduct create (or appear to create) a conflict of interest with any of the employee's responsibilities to the employer?
- 3) Does the off-duty conduct create potential situations in which the safety and well-being of other employees and/or the public are threatened?
When considering the safety and well-being of the public, particular attention must be given to those positions requiring contact with the public within and outside State office locations.

Consider:

- the nature and severity of the off-duty conduct;
- the relevance of the off-duty conduct to the essential duties and responsibilities of the position; and
- when the off-duty conduct took place (*the implication being that the time that has elapsed since the off-duty conduct took place should be considered*).

If consideration of all of these factors leads to a determination that, due to the off-duty conduct, an employee cannot effectively perform the duties of their particular job without presenting a potential risk to the safety and well-being of the public, or without adversely affecting the mission of the agency or the purpose of the employee's position, the employee may be disciplined up to and including dismissal.