

Sample Policy: Moonlighting

The following sample policies were excerpted from [The Book of Company Policies](#), published by HR Specialist, © 2007. Edit for your organization's purposes.

Sample Policy 1:

"An employee may hold a job with another organization as long as he or she satisfactorily performs his or her job responsibilities with XYZ. All employees will be judged by the same performance standards and will be subject to XYZ's scheduling demands, regardless of any existing outside work requirements.

"If the Company determines that an employee's outside work interferes with performance or the ability to meet the requirements of XYZ as they are modified from time to time, the employee may be asked to terminate the outside employment if he or she wishes to remain with XYZ.

"Outside employment will present a conflict of interest if it has an adverse impact on XYZ."

Sample Policy 2:

"On occasion, employees of XYZ may decide to seek employment outside their regular working hours. The company has no objection to this type of work when it does not interfere with employee performance or attendance at XYZ and when he or she is not in the employ of a vendor, client or competitor so as to create a conflict of interest in employment.

"All employees engaged in outside employment must immediately inform their supervisors in writing. Failure to disclose or misrepresent outside employment may result in disciplinary action, up to and including termination.

"All employees will be judged by the same performance standards and will be subject to XYZ's scheduling demands, regardless of any existing outside work requirements."

What's at Issue

More than seven million Americans, or about 6 percent of the work force, hold second jobs, according to the Bureau of Labor Statistics. There's every indication those numbers will continue to climb for the foreseeable future. If you don't already have "moonlighters" in your company, it is increasingly likely that you will. Here are some issues to consider in drafting a policy:

Productivity. When employees work two jobs, problems can arise: tardiness, absenteeism and lower performance due to tiredness or distractions.

Safety. Tired and distracted workers tend to make more mistakes than others, and those mistakes can endanger everyone on the job.

Conflicts of interest. Knowingly or innocently, moonlighters may share your proprietary information with their secondary employers or use confidential information, such as customer lists, to grow their own fledgling businesses. They may even go into competition with you.

Possible misuse of company property. Again, innocently or knowingly, moonlighters may use your equipment and supplies to pursue their after-hours business.

Potential for increased workers' compensation costs. Employees injured while moonlighting may file workers' comp claims against your business.

Policy Considerations and Alternatives

Before you start drafting a policy—or simply dismiss the idea—give some thought to your needs:

- **Are you experiencing problems related to moonlighting?** If not, you may not need a moonlighting policy, particularly if you have well-defined policies on performance, attendance, use of company property and conflicts of interest. However, if you anticipate or are experiencing problems, now is the time to address the specifics by drafting a policy that suits your philosophy and concerns.
- **Are safety and performance your main concerns?** Use your performance and attendance policies to help stem tardiness, absenteeism and lowered productivity. Then emphasize these issues in your moonlighting policy. Make it clear that moonlighting employees must meet your productivity standards, including deadlines and overtime when called for, and that failure to do so may result in discipline or termination. Bear in mind, however, that it may be more productive to try to accommodate workers with scheduling conflicts by offering them flextime.
- **Is your main concern conflict of interest?** Then you may want to restrict moonlighting by requiring employees to obtain approval from senior management before accepting a second job. If you don't want to be that stringent, be sure to spell out what constitutes a conflict of interest and what the penalties are. Moonlighting for a competitor or setting up an after-hours business that competes with yours could be grounds for dismissal. The same would hold true if an employee used your proprietary information, such as customer lists or mailing lists, for another employer (or in his own business) even if the second employer doesn't compete with you.
- **What about issues of fairness and discrimination?** A moonlighting policy will make it easier to defend the fairness of any discipline you may have to mete out to a moonlighter who breaches your policies. Just be sure you apply the same standards and procedures to every moonlighting employee who holds a similar position with your firm to avoid charges of discrimination.
- **How flexible can you be?** You can't expect to keep forever a highly productive employee whose goal is to open her own (noncompetitive) business. But you'll probably keep her longer if you let her moonlight to get it started. The Department of Labor found that about one-sixth of employees with second jobs say they moonlight for the enjoyment or learning experience of their after-hours work. They may actually bring more energy and creativity to the work they do for their full-time employer. You can encourage their pursuits but have a clear understanding that you still expect a professional performance on the job.
- **Do you need a moonlighting policy for your entire work force?** If your concerns are limited to a few key employees, employment contracts that prohibit them from moonlighting may prove more effective than a policy statement.

Recommendation: Think twice about letting employees work for themselves after hours on your premises or

use your equipment in their after-hours enterprises. You could be held liable for workers' compensation (or damages for negligence) if the employee got hurt in either situation. What's more, if the work is done with your equipment and/or on your premises, you face potential liability for its quality. Thus if your employee's client was hurt because of his after-hours work, the client could sue you, claiming that he thought your firm sanctioned the employee's work.

Caution: Before you attack a moonlighting situation with defensive gusto, be aware that a company cannot invade a worker's privacy to determine if she is moonlighting. If you learn that a worker is moonlighting, and you don't have a formal policy on it, make objective observations and stick to the facts. Note how you learned of the outside activity in case the worker tries to prove later that you invaded her privacy to find out about her second job.

Most employers frown on moonlighting and fear lowered productivity, the eventual loss of a valued employee or conflicts of interest. But unless you have a formal company policy or make it part of a valid employee contract, what employees do on their own time is their business, provided they don't make it yours. It becomes your business if they devote so much time and energy to the second job that their productivity suffers or if they compete with you or use your property or proprietary information in their off-hours job without your permission. A well-defined moonlighting policy can help you stem such problems.