

Life After NRC: Post-Employment Restrictions Applicable to NRC Employees

Is there life after NRC?

The answer is a resounding “yes.”

The post-employment law (18 U.S.C. § 207) is not intended to prevent private sector employment after an individual terminates Federal service. Instead, it restricts an individual from performing certain representational activities in behalf of some one else before the Government after the individual leaves Federal service. This article answers the major questions employees ask about post-employment prohibitions.

“Who can I work for after I leave the NRC?”

After termination, you can work for anyone, even an NRC licensee or contractor. The government-wide regulations implementing the post-employment law specifically state that this statute is not intended to discourage the movement of skilled Government workers to and from positions in the private sector. The regulations even provide that this flow of skills can promote efficiency and communication between the Government and private parties.

“What can or can’t I do for my new employer?”

Two basic restrictions apply to all former Federal employees:

1. Lifetime bar: All former employees, including former special Government employees, are prohibited for life from (1) knowingly making any appearance or communication to a Government employee with intent to influence (2) on behalf of anyone other than the United States (3) on a particular matter involving a specific party in which the United States is a party or has a direct and substantial interest and (4) in which they personally and substantially participated while at the NRC.

2. Two-year bar: All former supervisors, including former special Government employees, are prohibited for two years after terminating Federal service from (1) knowingly making any appearance or communication to a Government employee with intent to influence (2) on behalf of anyone other than the United States (3) on a particular matter involving a specific party in which the United States is a party or has a direct and substantial interest and (4) which the former supervisor knows or should reasonably know was pending under his or her official responsibility within one year before leaving the NRC. (While the lifetime bar encompasses matters the supervisor worked on personally and substantially, the two-year bar pertains to matters that the supervisor did not work on but that fell within the supervisor’s responsibilities.)

“What appearances or communications are prohibited under these two restrictions?”

A prohibited **appearance** occurs when you are physically present at a proceeding when the circumstances make it clear that your attendance is intended to influence the Government or when you are conveying material to the Government in connection with a formal proceeding or application.

A prohibited **communication** is broader and would include correspondence, telephone calls, or other electronic transmission.

However, communications that are not “intended to influence” are not prohibited. These communications include purely social contacts, a request for publicly available documents, or a request for purely factual information (such as the status of an item), or the supplying of that information.

“What NRC particular matters am I barred from representing someone on after I leave the agency?”

Particular matters include any specific NRC application, contract, licensing proceeding, investigation, enforcement action, or request for ruling involving a specific party or parties. Rulemaking, legislation, the formulation of general policy, standards, or objectives, or other actions of general application are excluded from this definition. Therefore, as a former employee you could represent another person even if the proceeding involved rules or policies that you had a role in establishing.

“What is personal and substantial participation under these restrictions?”

Personal and substantial participation includes decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise. **Personal participation** means direct involvement and includes the participation of a subordinate when actually directed by the former employee. **Substantial participation** means that the involvement was either substantial or formed a basis for a reasonable appearance of significance and was more than perfunctory.

“Under the two-year bar for supervisors, what is official responsibility?”

Even if you were not directly involved in an NRC particular matter, you are barred for two years from representing someone else if the matter was under your direct administrative or operating authority to approve or disapprove or otherwise direct Government action.

Your authority over the matter could be intermediate or final, exercisable alone or with others and either personally or through subordinates.

The scope of official responsibility is usually determined by those areas assigned by statute, regulation, executive order, or job description.

“These restrictions seem to apply only for representing someone else. Does that mean that I could represent myself to the NRC on some matter I was involved in as an employee?”

Yes. You are not restricted from representing only yourself to the NRC.

“What about working for my new employer on some NRC matter that I was involved in while at the agency, but not contacting anyone at the NRC about it?”

These restrictions do not prohibit “behind-the-scenes” work. Therefore, you could prepare a paper for your new employer describing the NRC staff who should be contacted on the matter you worked on while at the NRC or you could even develop a bid on a Request for Proposal you worked on at the NRC. The key is that you do not contact anyone at the NRC on these matters.

Keep in mind that if you worked on a **procurement** at the NRC that exceeded **\$10 million** in a certain position (such as contracting officer, program manager, source selection board member, or you made a decision to award a contract), you are prohibited under the Procurement Integrity Act for **one year** from ceasing performance on that contract from accepting any compensation from that contractor as an employee, officer, director, or consultant.

“Are there special restrictions on former high-level officials?”

For **one year** after leaving the NRC, a former NRC employee or special Government employee whose rate of basic pay is equal to or greater than 86.5% of basic pay for level II of the Executive Schedule cannot knowingly make any communication or appearance to an NRC employee with intent to influence on behalf of any private person on any matter on which the former official seeks official action.

This restriction applies even though the former senior official was not in any way involved in the matter that is the subject of the representation and it applies to any matter, whether or not it involves a specific party.

This particular prohibition would not prohibit a former NRC senior official from representing another party to the Department of Energy or any other Federal agency.

These same former high-level officials, for **one year** after termination, cannot represent, aid, or advise a foreign government or foreign political party with the intent to influence Governmental officials.

This restriction **does not apply** to an international organization in which the United States participates, such as the International Atomic Energy Agency, if the Secretary of State certifies in advance that such activity is in the interest of the United States.

These same former high-level officials can also represent to the Government, **within one year of termination**, State or local governments and certain institutions of higher learning, hospitals, and medical research organizations.

They can conduct private business at a nuclear utility and even meet with NRC staff at that facility as long as they do not attempt to influence an NRC employee on an agency matter.

Post-employment laws are enforced. For example, a former senior official of another agency agreed to pay \$5,000 as a settlement of a complaint for violation of the post-employment law for arranging and attending, within one year of her resignation, a meeting between her former agency and the company on which she was a member of the board of directors on a matter pending before the agency.

Please consult a Deputy Counselor in the Office of the General Counsel or your Regional Counsel if you have a post-employment question or issue.

When you leave NRC service, you will receive material on the post-employment restrictions, including the law and regulations. Even after you leave the NRC, OGC will provide you, upon request, legal advice on post-employment restrictions.