

# Code of Conduct and Business Ethics\*

prepared for



presented by

Jonathan A. Segal, Esquire

Follow me on Twitter @Jonathan\_HR\_Law

\*No statements made in this seminar or in the PowerPoint or other materials should be construed as legal advice or as pertaining to specific factual situations. Further, participation in this seminar or any question and answer (during or after the seminar) does not establish an attorney-client relationship between Duane Morris LLP (or the Duane Morris Institute) and any participant (or his or her employer).

©2016 Duane Morris LLP. All Rights Reserved. Duane Morris is a registered service mark of Duane Morris LLP.

Duane Morris – Firm Offices | New York | London | Singapore | Philadelphia | Chicago | Washington, D.C. | San Francisco | Silicon Valley | San Diego | Shanghai | Boston | Houston | Los Angeles | Hanoi | Ho Chi Minh City | Atlanta | Baltimore | Wilmington | Miami | Boca Raton | Pittsburgh | Newark | Las Vegas | Cherry Hill | Lake Tahoe | Myanmar | Oman | Duane Morris – Affiliate Offices | Mexico City | Sri Lanka | Duane Morris LLP – A Delaware limited liability partnership

# Introductions

## A. Who

### 1. Employees

- a. Direct
- b. Temporary (joint employer)

### 2. Contractors

- a. Practical: enforcement
- b. Legal: joint employer

## Disclaimer

- A. Not a contract
- B. Does not guarantee employment versus reaffirmation of at-will principle
- C. Right to interpret in sole discretion
- D. Right to modify, amend, terminate, etc., in whole or in part, in sole discretion
- E. Conflict with law—law applies

# Reporting Policies

## A. Examples

1. Whistleblower—illegal, unethical and unsafe
2. Financial regularities
3. Code of Conduct

## B. Reporting Options

1. Designated person(s)
2. Hotline

# Reporting Policies

## C. Assurances

1. Confidentiality
2. Non-retaliation

## D. Corrective Action

# Improper Payments

## A. Categories

1. Bribes
2. Kickbacks

# Improper Payments

## B. Address

1. General prohibitions (to avoid legal admissions)
2. Tie into Conflicts of Interest

# Foreign Corrupt Practices Act

- A. General Statement of US Law
- B. Recognition of foreign laws addressing same topic
- C. Practical rules: see improper payments



# Charity

- A. Voluntary
- B. Individual capacity (not on behalf of company)

## Political

- A. Not on behalf of company (social media example)
- B. Not at work
- C. No lobbying on behalf of company unless authorized
- D. Duty to report (in some cases)

# Gifts

## A. Rules on

1. Giving
2. Receiving

## B. Overlap

1. Conflicts
2. Improper payments

# Outside Employment

- A. Competitor—prohibit (but be careful of definition; see non-compete)
- B. Non-competitor
  - 1. Cannot interfere; or
  - 2. Require:
    - a. Report; or
    - b. Approval

# Conflicts of Interest

## A. Examples

1. See above, such as gifts
2. Other examples:
  - a. Working with family members
  - b. Using employment status in bargaining independent of work

## B. Actual, potential or perceived

## C. Waive-able and non-waive-able

# Fiduciary Duty

A. General rule

B. Examples:

1. Taking “corporate opportunity”
2. Non-disparagement (legal issues)

# Contracts

- A. Right to enter into contracts/bind company
- B. Individual v. cumulative amount trap

## Media

- A. Cannot talk with media (NLRA risks)
- B. Cannot act as spoke person for company with media



## Lobbying

- A. Cannot lobby on behalf of company, unless prior permission from designated person
- B. Guidelines if approval is provided (e.g., register)

# EEO

## A. Issues

1. Discrimination
2. Harassment (not just sexual)
3. Reasonable accommodations
4. Retaliation/retribution
5. Bullying—outside of US

# EEO

## B. How

1. General Statement
2. Reference Employee Handbook (pros and cons of links generally)

# Anti-trust, Competition and Fair Dealings

- A. General rules
- B. Examples of prohibited behaviors (beyond legal minimum)
- C. Tie into Reporting Procedures (Violation of Law and/or Code)

## Industry Specific

- A. Hospital: HIPAA
- B. Pharmacy: DEA
- C. Food: USDA
- D. Pharmaceutical: FDA
- E. Financial Services: FINRA
- F. Law Firm: Professional Ethics

# Publicly-Traded Companies

A. Additional provisions

B. Examples

1. Insider Training
2. Black Out Period
3. Financial Reports

# Confidentiality

## A. Define

1. Include examples of proprietary information
2. Do not includes employment examples (NLRA issue)
3. Compare with contracts

# Confidentiality

## B. Address

1. During employment
2. After employment



## Confidentiality

C. Federal Trade Secret Act

D. Special issue—post-termination subpoenas or other legal compulsion and duty to report

1. Silence
2. Duty to report—if yes, carve out?
  - a. Government investigations (safest legally); or
  - b. Government investigations if instructed not to report

# Intellectual Property

## A. Define, such as

1. Copyright
2. Patents

## B. Who owns

1. Employees
2. Contractors

# Cooperation

- A. Government Investigations
- B. Internal audits
- C. External audits

## Other Provisions

- A. Substance Abuse
- B. Employee Health and Safety
- C. Environmental Stewardship
- D. Federal Contracts (procurement issues)
- E. Human Trafficking
- F. Social Media
- G. Waivers (some only)
- H. ETC

# 10 Most Common Mistakes

- A. Inconsistency between Employee Handbook and Code
- B. Absolutes (where not required and not practical)
- C. Failure to obtain necessary guidance on non-HR provisions
- D. Including procedures rather than general policy
- E. Focusing on illegal v improper (such as harassment and anti-trust)
- F. Not considering NLRA and other limitations
- G. Not monitoring compliance
- H. Not taking appropriate corrective action for violation
- I. Not revising periodically
- J. Stating that position or function will “ensure”



SEMINAR



WEBINAR

# Thank you!

Follow me on Twitter @Jonathan\_HR\_Law

©2016 Duane Morris LLP. All Rights Reserved. Duane Morris is a registered service mark of Duane Morris LLP.  
Duane Morris – Firm Offices | New York | London | Singapore | Philadelphia | Chicago | Washington, D.C. | San Francisco | Silicon Valley | San Diego | Shanghai | Boston | Houston | Los Angeles |  
Hanoi | Ho Chi Minh City | Atlanta | Baltimore | Wilmington | Miami | Boca Raton | Pittsburgh | Newark | Las Vegas | Cherry Hill | Lake Tahoe | Myanmar | Oman | Duane Morris – Affiliate Offices | Mexico City | Sri Lanka |  
Duane Morris LLP – A Delaware limited liability partnership