

How to Prevent and Address Dual Employment

Through Improved Policies and Continual Monitoring



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This paper provides guidance on the steps employers can take to effectively prevent or mitigate the risks associated with their employees engaging in Dual Employment.

Why Dual Employment Risk Matters



"Moonlighting" occurs when an employee holds an additional full-time or part-time job beyond their main employment, often without informing their primary employer, and generally takes place after their primary working hours.

Dual Employment (also referred to as Over Employment) is a specific type of moonlighting where an employee holds another full-time position, often with a competitor, in a conflicting role, or in a position sufficiently senior or sensitive to raise significant concerns.

If the Dual Employment is related to the employee's primary employment, it often presents ethical concerns or a conflict of interest that puts the primary employer's confidential or proprietary information at risk. When an employee engages in Dual Employment it may have a negative impact on that employee's ability to effectively carry out the duties associated with their primary employment.

Employees typically work a secondary job to gain an additional source of income or relevant experience in a desired field. This type of moonlighting is often referred to as a "side hustle" or secondary income and the employee has no intent to deceive their primary employer. ClearForce does not recommend treating every case of Dual Employment the same; instead, aligning company policy to clearly articulate when it occurs, what is acceptable, and how to keep the employer informed as the preferred path.

Duty of Loyalty Agreement and Policy

In many states, employees owe a common law duty of loyalty to their employers. Pursuant to this duty, an employee must act solely for the benefit of their employer in all matters within the scope of their employment. An employee that breaches this duty of loyalty may be required to return the money paid to them by their primary employer during the breach, pay their employer the money they earned while working for the secondary employer, or destroy or return confidential or proprietary data that belonged to their primary employer that they may have used or taken.

Employers may consider including duty of loyalty provisions in employment agreements (such as non-disclosure agreements, restrictive covenant agreements, and other employment agreements), ideally signed upon hire, but may be signed later in employment. These types of provisions can prohibit the employee from engaging in dual employment activities that create a conflict of interest.

Additionally, employers may include a duty of loyalty policy in any employee handbook to set the groundwork for non-compliant conduct activities. Inclusion in conduct policy also supports the Federal Credit Reporting Act (FCRA) Fair and Accurate Credit Transactions Act (FACT Act) exception for investigating compliance with written policies of the employer. ClearForce can provide sample drafts of duty of loyalty provisions upon request.

Non-Compete Agreements

Employers may consider entering noncompetition restrictions with employees. These restrictions can prohibit employees from working for a competitor during the employment period (and potentially thereafter as well). Employers considering restrictive covenants should pay careful attention to state-specific requirements related to the roll-out of such agreements, including notice period and signature requirements, consideration requirements for current employees in many states and new employees in some states, and post-employment notice requirements. Additionally, the covenants should be tailored to protect the employer's legitimate business interests such as the protection of confidential information and trade secrets, goodwill with customers, referral sources, employees, and others, and highly specialized training provided by the employer to the employee.

Conflict of Interest Policy

Employers may consider the inclusion of a Code of Ethics / Conflicts of Interest Policy in the employee handbook. Similar to the recommendation for the inclusion of a duty of loyalty policy, discussed above, the inclusion of this policy in the employee handbook could support discipline of employees that engage in moonlighting and would lay the groundwork for the FCRA exception of investigating compliance with the company's written policies. ClearForce can provide sample drafts of conflict of interest policy upon request.

Top 10 Risks of Dual Employment

1. **Conflicts of Interest (COI):** Violation of COI policies or employment agreements.
2. **Data Leakage:** Increased risk of accidental or intentional leakage of confidential & proprietary information.
3. **Insider Data Breaches:** Use of data from one employer to benefit another for personal gain or pressure.
4. **Regulatory Compliance Issues:** Non-compliance with regulatory requirements (ex. finance, healthcare).
5. **Intellectual Property (IP) Theft:** Inadvertently or deliberately share intellectual property.
6. **Innovation Leakage:** Sharing innovative ideas with competitors.
7. **Strategic Disadvantage:** Proprietary strategies or plans shared with competitors.
8. **Competitive Intelligence:** Sharing confidential or competitive information with other firms.
9. **Exploitation by External Parties:** Employees can be manipulated or coerced into sharing sensitive information.
10. **Unreliable Performance:** Divided attention leads to errors, project delays, and inconsistent performance.

The ClearForce Solution

ClearForce's continuous monitoring solution helps organizations detect and manage cases of undisclosed Dual Employment through its patented Resolve™ privacy and governance platform. By leveraging verified employment data and real-time alerts, the solution empowers HR and compliance teams to proactively address risks before they escalate. Seamless integration and configurable workflows ensure minimal disruption while maximizing workforce transparency.

For more information and to schedule a demonstration, please visit ClearForce

<https://www.clearforce.com/overemployment-monitoring>