

EMPLOYMENT REQUIREMENTS AND RESTRICTIONS
NEPOTISM

DBE
(LEGAL)

Nepotism Prohibited

Except as provided by Government Code 573.043, this policy applies to relationships within the third degree by consanguinity (blood) or within the second degree by affinity (marriage). *Gov't Code 573.002*

A public official may not appoint, confirm the appointment of, or vote for the appointment or confirmation of the appointment of an individual to a position that is to be directly or indirectly compensated from public funds or fees of office if:

1. The individual is related to the public official within a degree described by Government Code 573.002; or
2. The public official holds the appointment or confirmation authority as a member of a state or local board, the legislature, or a court, and the individual is related to another member of the board, legislature, or court within a degree described by Government Code 573.002.

Gov't Code 573.041; Atty. Gen. Op. GA-415 (2006)

Independent Contractor

The nepotism law governs the hiring of an individual, whether the employee is hired as an individual or an independent contractor. *Atty. Gen. Op. DM-76 (1992)*

Compensation of Prohibited Employee

A public official may not approve an account or draw or authorize the drawing of a warrant or order to pay the compensation of an ineligible person if the official knows the individual is ineligible. *Gov't Code 573.083*

Consanguinity

Two persons are related to each other by consanguinity if one is a descendant of the other or they share a common ancestor. An adopted child is considered to be a child of the adoptive parent for this purpose. *Gov't Code 573.022*

An individual's relatives within the third degree by consanguinity are the individual's:

1. Parent or child (relatives in the first degree);
2. Brother, sister, grandparent, or grandchild (relatives in the second degree); and
3. Great-grandparent, great-grandchild, aunt who is a sister of a parent of the individual, uncle who is a brother of a parent of the individual, nephew who is a child of a brother or sister of an individual, or niece who is a child of a brother or sister of the individual (relatives in the third degree).

Gov't Code 573.023(c) [See DBE(EXHIBIT)]

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Half-Blood
Relatives

There is no distinction under the nepotism statute between half-blood and full-blood relations. Thus, half-blood relationships fall within the same degree as those of the full blood. *Atty. Gen. Op. LO-90-30 (1990)*

Affinity

Two individuals are related to each other by affinity if they are married to each other or the spouse of one of the individuals is related by consanguinity to the other individual.

The ending of a marriage by divorce or the death of a spouse ends relationships by affinity created by that marriage unless a child of the marriage is living, in which case the marriage is considered to continue as long as a child of that marriage lives.

Gov't Code 573.024

A husband and wife are related to each other in the first degree by affinity. For other relationships by affinity, the degree of relationship is the same as the degree of the underlying relationship by consanguinity. For example, if two persons are related to each other in the second degree by consanguinity, the spouse of one of the individuals is related to the other person in the second degree by affinity.

A person's relatives within the second degree by affinity are:

1. The person's spouse;
2. Anyone related by consanguinity to the person's spouse within one of the ways named in Government Code 573.023(c) (first or second degree); and
3. The spouse of anyone related to the person by consanguinity in one of the ways named in Government Code 573.023(c) (first or second degree).

Gov't Code 573.025

**Effect of Board
Member Resignation**

All public officers shall continue to perform the duties of their offices until their successors shall be duly qualified, i.e., sworn in. Until the vacancy created by a board member's resignation is filled by a successor, the board member continues to serve and have the duties and powers of office, and a relative within a prohibited degree of relationship is barred from employment. *Tex. Const., Art. XVI, Sec. 17; Atty. Gen. Op. JM-636 (1987)*

Exceptions

Continuous
Employment
(Grandfather
Clause)

The nepotism prohibitions do not apply to the appointment, confirmation of an appointment, or vote for an appointment or confirmation of an appointment of an individual to a position if the individual is employed in the position immediately before the election or appointment of the public official to whom the person is related in a

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prohibited degree and that prior employment is continuous for at least:

1. Thirty days, if the public official is appointed; or
2. Six months, if the public official is elected.

Gov't Code 573.062(a)

Abstention

If an individual continues in a position, the public official to whom the individual is related in a prohibited degree may not participate in any deliberation or voting on the appointment, reappointment, employment, reemployment, change in status, compensation, or dismissal of the individual if the action applies only to the individual and is not taken regarding a bona fide class or category of employees. [See DBE(EXHIBIT)] *Gov't Code 573.062(b)*

A "change in status" includes a reassignment within an organization, whether or not a change in salary level accompanies the reassignment. *Atty. Gen. Op. JC-193 (2000)*

For an action to be "taken with respect to a bona fide category of employees," the officeholder's action must be based on objective criteria, which do not allow for the preference or discretion of the officeholder. *Atty. Gen. Op. DM-46 (1991)*

Trading

A public official may not appoint, confirm the appointment of, or vote for the appointment or confirmation of the appointment of an individual to a position in which the individual's services are under the public official's direction or control and that is to be compensated directly or indirectly from public funds or fees of office if:

1. The individual is related to another public official within the prohibited degree; and
2. The appointment, confirmation of the appointment, or vote for the appointment or confirmation of the appointment would be carried out in whole or partial consideration for the other public official appointing, confirming the appointment, or voting for the appointment or confirmation of the appointment of an individual who is related to the first public official within a prohibited degree.

Gov't Code 573.044

Federal Funds

The rules against nepotism apply to employees paid with public funds, regardless of the source of those funds. Thus, the rules apply in the case of a teacher paid with funds from a federal grant. *Atty. Gen. L.A. No. 80 (1974)*

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Penalties

An individual who violates Government Code Chapter 573, Subchapter C or Government Code 573.062 (the nepotism prohibitions) shall be removed from the individual's position. *Tex. Gov't Code 573.081–.082*

An individual commits an offense involving official misconduct if the individual violates Government Code Chapter 573, Subchapter C (Prohibition on Public Officials), Government Code 573.062(b) [see Continuous Employment and Abstention] or Government Code 573.083 [see Compensation of Prohibited Employee]. *Gov't Code 573.084*