



# INDIANA

## DEPARTMENT OF LABOR

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### INDIANA STATE ETHICS COMMISSION

FEB 11 2021

IC 4-2-6-11

#### Post-employment waiver

FILED

As the Appointing Authority of the Indiana Department of Labor, I am filing this waiver of the application of the Code of Ethics' post-employment restriction as it applies to Joby A. Johnson in his post-employment with Sunrise Coal, LLC.

I understand that I must file and present this waiver to the State Ethics Commission at their next available meeting. I further understand that this waiver is not final until approved by the State Ethics Commission.

A. This waiver is provided pursuant to IC 4-2-6-11(g) and specifically waives the application of *(Please indicate the specific restriction in 42 IAC 1-5-14 (IC 4-2-6-11) you are waiving):*

- IC 4-2-6-11(b)(1): 365 day required "cooling off" period before serving as a lobbyist.
- IC 4-2-6-11(b)(2): 365 day required "cooling off" period before receiving compensation from an employer for whom the state employee or special state appointee was engaged in the negotiation or administration of a contract and was in a position to make a discretionary decision affecting the outcome of such negotiation or administration.
- IC 4-2-6-11(b)(3): 365 day required "cooling off" period before receiving compensation from an employer for which the former state employee or special state appointee made a directly applicable regulatory or licensing decision.
- IC 4-2-6-11(c): Particular matter restriction prohibiting the former state employee or special state appointee from representing or assisting a person in a particular matter involving the state if the former state officer, employee, or special state appointee personally and substantially participated in the matter as a state worker. *(Please provide a brief description of the specific particular matter(s) to which this waiver applies below):*

B. IC 4-2-6-11(g)(2) requires that an agency's appointing authority, when authorizing a waiver of the application of the post-employment restrictions in IC 4-2-6-11(b)-(c), also include specific information supporting such authorization. Please provide the requested information in the following five (5) sections to fulfill this requirement.

1. Please explain whether the employee's prior job duties involved substantial decision-making authority over policies, rules, or contracts:

Mr. Johnson's duties as Chief Mine Inspector and Mine Rescue Team Trainer did not involve substantial decision-making authority over policies, rules, or contracts. That authority is the primary responsibility of the Indiana Mining Board. The Mining Board has the final decision after consulting with mine operators and the Bureau of Mines Director.

Mr. Johnson did not promulgate any rules, but he made decisions regarding a mine's compliance with mine health and safety rules. However, compliance was voluntary, and he had no enforcement authority. He also put a budget together for the mine rescue station in June of 2019 and the Board and the Operators collaborated on the best way to divide the monies for assessment. The Board notifies the Operators when and how the monies are to be paid.

2. Please describe the nature of the duties to be performed by the employee for the prospective employer:

Mr. Johnson's primary duties at Sunrise will be examining belt lines, escapeways, air courses, and seal areas for safety and health conditions. There would be the possibility of assisting in Federal Mine Safety and Health Administration (MSHA) annual refresher training and other training opportunities. Mr. Johnson may also remain on the Indiana State Mine Rescue Team and may remain the trainer of the team, subject to approval by both Sunrise and the Bureau of Mines.

3. Please explain whether the prospective employment is likely to involve substantial contact with the employee's former agency and the extent to which any such contact is likely to involve matters where the agency has the discretion to make decisions based on the work product of the employee:

There is no anticipated substantial contact with the Bureau of Mines or the Department of Labor. Any involvement with the Bureau of Mines would be related to his potential continuous involvement with the state mine rescue team. Mr. Johnson could then possibly have input as a collaborator with the Board as mine rescue trainer regarding the number of personnel that each Operator is required to furnish to the mine rescue team under IC 22-10-12-11, but the final decision would be with the Board and the Operators.

4. Please explain whether the prospective employment may be beneficial to the state or the public, specifically stating how the intended employment is consistent with the public interest:

Benefits to the state and the public would include having a safe and highly qualified mine worker working for a mining operator like Sunrise. Sunrise currently owns two of four mines that are inspected by the State Bureau of Mines. Having Mr. Johnson working directly in the mine every day will be like having another trained set of eyes in the mines looking to improve safety for all the workers. Likewise, if he remains on the state mine rescue team and remains the trainer of the team, any rescue that may be needed will still benefit from his expertise in that area.

5. Please explain the extent of economic hardship to the employee if the request for a waiver is denied:

Mr. Johnson currently makes \$47,000 per year working for the state as Chief Mine Inspector with the Bureau of Mines and Mining Safety. His starting pay with Sunrise would be over \$60,000 per year, which is the starting pay for most positions at the mine. Opportunities to increase the annual wage to \$75,000 or higher are possible by the end of the year.

If a waiver is denied, it is uncertain what kind of a job Mr. Johnson could get outside his field of expertise and how much it would pay. Without being able to utilize his expertise in mining, companies that may consider hiring him would likely want to only pay him close to what he was last making with the state - \$47,000 per year. It is also uncertain if he would even be offered such an opportunity again if he had to wait a year to work for a mine.

C. Signatures

1. Appointing authority/state officer of agency

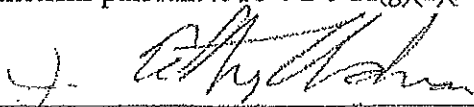
By signing below I authorize the waiver of the above-specified post-employment restrictions pursuant to IC 4-2-6-11(g)(1)(A). In addition, I acknowledge that this waiver is limited to an employee or special state appointee who obtains the waiver before engaging in the conduct that would give rise to a violation.

  
\_\_\_\_\_  
Joe B. Hoage, Commissioner of Labor

2/3/21  
\_\_\_\_\_  
DATE

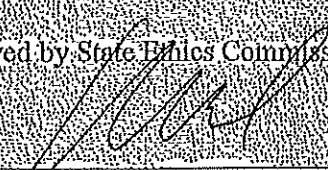
2. Ethics Officer of agency

By signing below I attest to the form of this waiver of the above-specified post-employment restrictions pursuant to IC 4-2-6-11(g)(1)(B).

  
\_\_\_\_\_  
J. Anthony Hardman, General Counsel - IDOL

2/3/21  
\_\_\_\_\_  
DATE

D. Approval by State Ethics Commission

FOR OFFICE USE ONLY	
Approved by State Ethics Commission	
	2/11/2021
Katherine Noel, Chair, State Ethics Commission	Date