

Gifts

Key References: DoD 5500.7-R; 5 CFR § 2635; 5 U.S.C. 7342, 7351 & 7353; 10 U.S.C. 2601 & 2608; 31 U.S.C. 1353; DoDD 1005.13; SECNAVINST 1650.1H; SECNAVINST 4001.2Hi OPNAVINST 4001.1E

Key Concepts:

- The basic rule: An employee shall not solicit or accept, directly or indirectly, a gift from a prohibited source or given because of the employee's official position.
- Prohibited source: Any person or entity that: is seeking official action by the employee's agency; does or seeks to do business with the employee's agency; is regulated by the employee's agency; has interests that may be substantially affected by the employee's official duties; or is an organization a majority of whose members fit one or more of these categories.
- Official position: The test whether the gift would have been given had the employee not held the status, authority, or duties.
- Indirect gifts include gifts to a spouse, child, parent, sibling or dependent relative or any other person including a charity on the basis of designation, recommendation, or other specification by the employee.

Gift Definition

The term "gift" is broadly defined and includes any gratuity, service, discount, entertainment, hospitality, or other item having monetary value. It includes meals, lodging, transportation, and training. The term "gift" does not include:

- Coffee, donuts, or other refreshments not intended to be a meal.
- A "presento" of little intrinsic value (card, plaque, certificate).
- Commercial benefits available to the general public or class of all Government employees/mil personnel.
- Anything for which the employee pays fair market value.
- Anything accepted by the Government in accordance with agency gift acceptance statutes (e.g., gifts to enlisted members, gifts of travel).
- Anything paid for by the Government or secured by the Government under Government contract.

Common Exceptions to Prohibition against Accepting Gifts from Outside Sources

- Gifts of 0 or less: Unsolicited gifts (NOT cash) with a market value of \$20 or less per source and per occasion are permissible so long as the total value of all gifts received from a single source during a CY does not exceed \$50.
- Gifts based on a personal relationship are permissible.
- Gifts from foreign governments: Employees may accept a gift (or combination of gifts) of "minimal value" (retail value in the US of \$335) if given and received as a courtesy from a foreign government. Gifts exceeding \$335 may be accepted on behalf of the US, but special rules and procedures apply.
- Awards: Employees may accept gifts that are a bona fide award (or incident to such an award) from a person who does not have interests that may be substantially affected by the performance (or non-performance) of the employee's official duties. An ethics counselor must approve cash/gifts in excess of \$200.
- Discounts: Employees may accept discounts offered by a non-prohibited source to any group or class that is not defined in a manner that specifically discriminates among Government employees on the basis of type of official responsibilities or on a basis that favors those of higher rank or rate of pay.
- Widely Attended Gatherings: Employees may accept a gift of "free attendance" from the sponsor of a "widely attended" gathering if the employee's agency determines that employee's attendance is in the interest of the agency (i.e.,

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attendance will further agency mission). A gathering is "widely attended" if it is expected that a large number of persons will attend and that persons with a diversity of views or interests will be present. Other special rules and procedures apply to this exception.

Gifts between Employees

- General Rule: Employees cannot accept a gift from a lower paid employee, unless they have a personal relationship and they are not in superior-subordinate relationship. Employees cannot give a gift to an official superior.
- Exceptions: On occasional basis, including traditional gift-giving occasions, such as birthdays and holidays, the following may be given by a subordinate and accepted by a superior:
 - Items (NOT cash) with value of \$10.00 or less per occasion (e.g., card).
 - Food and refreshments consumed at office.
 - Personal hospitality at subordinate's home of a type and value customarily given by the subordinate to personal friends.
 - Item given by a subordinate in connection with the receipt of personal hospitality from a superior if of a type and value customarily given on such occasions (e.g., a hostess gift of a \$15 bottle of wine).
- Special, Infrequent Occasions
 - Subordinate may give a gift or donate toward a group gift for superior, and superior may accept gift on special, infrequent occasions such as marriage, illness, birth of child, or upon termination of superior-subordinate relationship, such as transfer, resignation, or retirement. Promotion does not qualify for this exception.
 - Solicitations for group gifts may not exceed \$10 per person, but the employee is free to donate more. All donations must be voluntary.

*****Consult with your Staff/Force Judge Advocate or General Counsel*****