



THE LEGAL ISSUE, NOVEMBER 2012 HOLIDAY ETHICS GUIDANCE

PREPARED BY: LEGAL SERVICE COMMAND, MISSION SUPPORT DIVISION (LSC-4)

The holiday season is traditionally a time of parties, receptions, and exchanging gifts. Please keep in mind, standards of ethical conduct for federal employees apply even during the holiday season. A brief summary of the applicable rules is set forth below. This guidance is intended to provide you general information and acquaint you with the rules. It is not intended to be all-inclusive or to be a substitute for consulting an ethics attorney. If you have any questions or concerns, please contact your supervisor or Legal Service Command (LSC) to reach an ethics attorney: LSC-Norfolk, Mr. Miguel Padilla, (757) 628-4192 or Miguel.N.Padilla@uscg.mil or LSC-Alameda, Mr. Paul Janoff, (510) 437-3347 or Paul.N.Janoff@uscg.mil.

THE BRIEF

- Before you act, check out some of the “rules of the road” references. **Page 2**
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Can it be accepted? *Should* I accept it? **Page 2-3**
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APPLICABLE REFERENCES:

- (a) 5 C.F.R. §§ 2635.201 - 304
- (b) CG Standards of Ethical Conduct, CI M5370.8B
- (c) CG MWR Manual, CI M1710.13 (series)
- (d) Limited Personal Use of Government Office Equipment and Services, CI 5375.1 (series)

GIFTS

General Gift Rule: Coast Guard employees (civilian and military) may not solicit or accept, directly or indirectly, gifts offered because of their official positions or gifts offered by a “prohibited source,” unless an exception applies.

1. **Is the item a gift?** The term “**gift**” is broadly defined and includes any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other tangible or intangible item having monetary value. For example, this definition includes gifts of services as well as gifts of training, transportation, travel, lodging, and meals. If you are uncertain whether something should be considered a gift to a Coast Guard employee or a gift to the Coast Guard, contact the LSC because different rules may apply depending on the facts.

2. **Is the donor a prohibited source?** A “**prohibited source**” is anyone who:

- a. Is **seeking official action** by the Coast Guard;
- b. **Does business or seeks to business** with the Coast Guard;
- c. Is **regulated** by the Coast Guard;
- d. Has interests that may be **substantially affected by the employee’s performance of official duties**;
- e. Is an organization a majority of whose members fit into one or more the above categories.

Note: A person or entity does not become a prohibited source merely because of the offer of a gift.

3. **What does “official position” mean?** The test for “**official position**” is whether the gift would have been solicited, offered, or given had the employee not held the status, authority, or duties associated with his or her federal position.

4. **Remember, the number one gift rule:** Nothing requires a person to accept a gift—you may always decline the gift. Even though acceptance of a gift may be permitted by an exception, it is never inappropriate and frequently prudent for an employee to decline a gift offered by the prohibited source or because of his official position.

PARTIES, OPEN-HOUSES, AND RECEPTIONS

1. **Exceptions:** Coast Guard employees may **not** accept gifts of attendance at parties, open-houses, and receptions, from contractors and contractor personnel, **unless** one of the following exceptions applies:

- a. **De Minimis Gift:** Coast Guard employees may accept gifts (other than cash) not exceeding \$20, as long as the total amount of gifts that the employee accepts from the source does not exceed an aggregate total of \$50 for the year.
- b. **Personal Gift:** Coast Guard employees may accept gifts, even from a contractor

employee that are based on a *bona fide*¹ personal relationship. Such personal gifts must actually be paid for by the contractor-employee rather than the contractor-employer.

c. ***Widely-Attended Gathering (WAG)***: Coast Guard employees may generally attend a contractor's open-house or reception, and accept any gift of light food/refreshments if it has been determined the event is a widely-attended gathering, and the employee's supervisor determines that it is in the agency's interest that the employee attend.

d. ***Open to the Public***: Coast Guard employees may accept invitations (even from contractors) that are open to the public, all Government employees, or all military members.

e. ***Gifts unrelated to Federal Employment***: Coast Guard employees may accept invitations offered to a group or class that is not related to Government employment (for example, if the building owner where your office is located throws a reception for all of the tenants of the building).

f. ***Modest Items of Food and Refreshments***: Coast Guard employees may accept food items consisting of light refreshments such as soft drinks, coffee, pastries, or other similar refreshments not constituting a meal may be accepted since they are not considered to be a gift.

g. ***Gifts Based on Outside Business or Employment Relationships***: Coast Guard employees may accept attendance at events which are solely based on outside business or other employment relationships. For example, if a Coast Guard employee's spouse works at a Defense contractor, the Coast Guard employee may accompany the spouse to the contractor's holiday party since the invitation is to the spouse as an employee, and not to the Coast Guard employee because of his or her position.

2. ***Coast Guard Employees***: Coast Guard employees may accept gifts of attendance at parties, open-houses, and receptions, from other Coast Guard employees, if one of the following applies:

a. ***Invitation from a Subordinate***: Coast Guard employees may accept personal hospitality at the residence of a subordinate that is customarily provided on the social occasion.

b. ***Invitations from a supervisor or a co-worker***: There are no restrictions.

GIFT-EXCHANGE & GIFT ACCEPTANCE

1. ***Gifts Between Coast Guard Employees and Contractor Employees***:

a. Generally, gifts to Coast Guard employees from contractors, even during the holidays, may not exceed **\$20**.

b. ***Gifts to contractors***: Check with the contractor for ethics restrictions on their employees for gift acceptance. Some companies may have their own internal corporate ethics rules that their employees must abide by.

c. For more information on contract employees, see Rules Applicable to Contractor Employees section below.

2. ***Gifts between Coast Guard Employees***: Supervisors may **not** accept gifts from subordinates or Coast Guard employees who receive less pay or are junior on pay grade/rank, **unless** one of the following exceptions applies:

a. Exception #1: During the holidays, which occur on an occasional infrequent basis, supervisors may accept gifts (other than cash) of **\$10 or less** from a subordinate.

b. Exception #2: Supervisors may accept food and refreshments shared in the office and may share in the expenses of an office party.

¹ See 5 C.F.R. § 2635.204(b). In other words, a bona fide relationship is a family or personal relationship. Key factors in determining whether this exception applies include the history of the relationship, how the relationship arose, and who personally pays for the gift.

- c. Exception #3: If a subordinate is invited to a social event at the supervisor's residence, the subordinate may give the supervisor a hospitality gift of the type and value customarily given on such an occasion.
 - d. Exception #4: All solicitations of food, refreshments, or donations for gifts shall be on a voluntarily, non-coercive basis.
3. **Note:** There are no legal or ethical restrictions on gifts given to peers, co-workers, or subordinates, however, common sense and tactful taste should apply.

RULES APPLICABLE TO CONTRACTOR EMPLOYEES

1. Many contractors have rules of ethics or business practices that are similar to the Federal rules. Take these rules into consideration before offering contractor employees gifts or opportunities that they may not be able to accept.
2. **Some examples include:**
 - a. **Office Party (non-duty time):** Your office is having a holiday party during the non-duty lunch hour or after work and the organizer asks each person attending to pay \$5 to cover refreshments and to bring a pot luck dish or dessert. Contractor employees may attend, pay \$5, and bring food because these contributions are not considered to be gifts, but a fair share contribution to the refreshments. **Remember**, contributions must be voluntary, so soliciting must be done with care to ensure there is no pressure or coercion to contribute. Also, ensure this is non-duty time for the contractor employees as well.
 - b. **Office Party (duty time):** What about a party that cuts into duty hours? The Government usually may not reimburse a contractor for its employees' morale and welfare expenses. The contractor must decide whether to let its employee(s) attend and forego payment for their time, or insist that they continue to work. If contractor employees are allowed to attend, the contractor must also decide whether it would pay its employees for that time, even though the Government would not reimburse it. The contractor does not have to pay its employees for that time. You may consult the contracting officer and legal ethics counselor before inviting contractor employees to a function during their on-duty hours.
 - c. **Gift to Supervisor:** Your office wants to give your office supervisor a gift. However, you can't solicit other employees for contributions to a group gift, group gifts are permitted only for special, infrequent events such as retirements. As for contractor employees, you can't ask them to contribute anything, as it is considered soliciting a gift from a prohibited source. Even if contractor employees volunteer to contribute cash, it may not be accepted because the \$20 exception does not apply to cash.
 - d. **Exchange of Gifts:** Your office, including the contractor employees, wants to exchange gifts at the party. Because it is difficult to have truly **anonymous** gift exchanges, you will want to restrict the value of such "random or exchanged" gifts (e.g. secret santa, white elephant, etc.) to the **authorized \$10 or less** if personnel receiving different pay levels are involved. Gift exchanges in which employees purchase gifts for other employees whose names they drew at random are more troublesome and should be avoided. Where contractor personnel are involved, a **\$20** per contractor company limit applies. Where an employee may buy a gift for a superior, the **\$10 limit** is prudent. Some organizations consider such a gift exchange to be exchanges of items of equivalent value, and that everyone participating is paying market value for the items, so no one is receiving a gift. Only in that case would the suggested monetary limits not apply. The best practice is to limit gifts to \$10 or less when involving more than a very small group of equivalently paid co-workers.
 - e. **Private Parties (Federal Personnel):** One of your Government co-workers is having a party at his house and has invited office personnel, including the contractor employees. A gift of food and refreshments to a contractor employee does not violate Government ethics rules. The contractor employees may want to check with their contractor's rules before accepting (since many contractors have similar ethics rules). If the contractor employee brings a hospitality gift, it may not exceed \$20. If such a gift is edible, even if it exceeds \$20, the host may accept it on behalf of all the

guests and share it with them.

f. **Private Parties (Contractor Employee):** If a contractor-employee is having a personal party and invites Government personnel, normally Government personnel must decline, since the food, drink, and entertainment is a gift from a prohibited source. Several exceptions may permit attendance, however:

- i. Under the \$20 rule, if the average cost per guest does not exceed \$20, Government personnel may accept. However, if the cost per guest is \$40, the "then I won't eat more than \$20 worth of food," defense will not work.
- ii. Also, Government personnel may accept if the invitation is based on a *bona fide* personal relationship with the contractor-employee.
- iii. Finally, if the party qualifies as a **widely-attended gathering** (involving a large number of persons representing a diversity of views) and the employee's supervisor determines that it is in the agency's interest for the employee to attend, the employee may enjoy the food, drink, and entertainment. Government personnel who desire to take a gift to show their appreciation for the hospitality should consult with the contractor-employee to determine if he or she may accept such a gift in accordance with the contractor's rules of ethics.

g. **Private Parties (Contractor-sponsored):** If the contractor is sponsoring an employee's party or open-house, and a Coast Guard employee is invited by the contractor (or an employee of the contractor), that Coast Guard employee may not attend unless one of the above exceptions apply.

OTHER IMPORTANT INFORMATION

1. You may not solicit outside sources to support or contribute to your event. This includes food, funds, and items.
2. Generally, office parties are unofficial events and you may not use appropriated funds to pay for these events or decorations.
3. Beware that door prizes or drawings could involve elements of gambling, which would require compliance with state statutes and Federal regulations. U.S. General Services Administration (GSA) regulations ban gambling in GSA-owned or -controlled buildings (this includes leased facilities). For more information, see Sect. 5.C of CI M1710.13 (series); Sect. 2.B.15 of CI M12271.1 (series); 5 C.F.R. § 735.201; 41 C.F.R. § 102-74.
4. Coast Guard employees may not use appropriated funds to purchase and send greeting cards or holiday gifts for employees. The use of official government resources (e.g. paper, printer, envelopes, postage) is not authorized for cards.
5. As a general rule, participation at holiday social events is personal, not official, and therefore use of government vehicles to/from such events would not be authorized. However, there may be very limited circumstances in which a senior official or officer is invited to attend because of his official position and where he or she will be performing official functions at the event as opposed to being invited because he or she is an important person. In these situations, use of a government vehicle may be authorized, subject to normal "home-to-work" transportation restrictions. Note, however, that it would be difficult, if not impossible, to justify the use of a government vehicle when a function involves one's immediate staff/office or events comprised of personal friends. All requests for use of a government vehicle to attend holiday social events should be reviewed on a case-by-case basis.

Please remember that this guidance only highlights common questions, and does not cover every possible situation. If you are unsure, contact your ethics counselor at the LSC. We wish all of our clients and commands a safe, responsible, and enjoyable holiday season and new year!