

## GIFTS TO SUPERIORS UPON DEPARTING STATION

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### **Introduction.**

It's that time of year again when senior officers change their duty station and many retire. When that happens, their subordinates often wish to honor their service to the organization and, if they are retiring, to the Army and the United States. In addition to the ceremonies and other celebrations, gifts of refreshments, food, entertainment, plaques and other remembrances are often involved. These gifts create issues under the *Standards of Ethical Conduct for Employees of the Executive Branch* and the Department of Defense (DOD) *Joint Ethics Regulation*. The following article will help you deal with these gift issues.

### **What is the General Rule?**

The general rule is two-fold. First, employees may not directly or indirectly give gifts to an official superior, or solicit other employees to contribute to or give a gift to an official superior. Second, employees may not accept gifts from employees who are paid less than they are unless there is a personal basis justifying the gift **and** there is no subordinate-official superior relationship between them.

## Are There Any Exceptions?

The normal social interaction of the workplace requires these basic rules against gifts to protect junior employees, avoid coercion, and to ensure that senior employees do not abuse their official Government positions for their own gain or that of someone else. However, this same normal social interaction of the workplace requires some exceptions to the rule. These exceptions fall into two basic categories: the general "occasional basis" and the "special, infrequent occasions" exceptions.

Occasional basis: These are the common sense situations, most of which hardly seem to need an "exception." But, with the blanket prohibition, the exceptions are needed so as not to interfere with normal office social interaction. The exceptions are as follows:

- Food and refreshments shared in the office.
- Personal hospitality at home of a type and nature customarily provided by the employee to friends.
- Customary gifts given in connection with receipt of personal hospitality.
- Items, other than cash, with an aggregate market value of \$10 or less on any occasion on which gifts are traditionally given or exchanged.

This means that it is perfectly acceptable to bring a cake to the office, or to bring dishes of food for an office pot luck. Employees may invite their supervisors to dinner at their home (note, however, that under this exception an employee may *not* entertain his or her supervisor at the employee's favorite restaurant). When employees are invited to their supervisor's home for dinner, they may bring a bottle of wine or flowers. Members of an office may participate in a holiday exchange of gifts as long as no one feels "pressured" to participate.

While the last exception listed above permits employees to give gifts to their bosses for many different types of occasions such as holidays, birthdays and other occasions, we suggest that it be used sparingly. Just because an exception permits a gift does not mean that it is necessarily appropriate, especially in a military environment.

Solicitation of contributions are not permitted under this "occasional basis" exception except for the occasional food and refreshments to be shared in the office among several employees. Accordingly, even though a birthday gift for the boss might be technically permissible, contributions may not be solicited for the gift.

Special, infrequent occasions. This category permits a "gift appropriate to the occasion," and solicitation of contributions in a "nominal amount" from Army employees in "donating groups," in the following two situations:

- Infrequently occurring occasions of personal significance such as marriage, birth of child, or illness (this does not include birthdays or other annual celebrations; it does not include official visits to commands or other organizations by a visiting Army or other DOD dignitary; and it does not include promotions).
- Occasions that terminate a subordinate-official superior relationship, such as retirement, resignation, or transfer.

The latter exception often comes into play within the Department of the Army during the normal summer rotation cycle. Gifts from subordinates upon retirement and permanent change of station (PCS) are permitted. However, note that a PCS gift is not permitted if the officer is merely moving up in the chain of command; such a "transfer" does not "terminate [the] subordinate-official superior relationship."

DOD has supplemented this rule in the Joint Ethics Regulation (JER) to require that any gift or gifts "appropriate to the occasion" should not generally exceed \$300 in value from any donating group. This general \$300 limit does not include the cost of food, refreshments and entertainment provided to the honoree and his personal guests to mark the occasion for which the gift is given. The JER also defines the "nominal amount" that may be solicited in the way of voluntary contribution as not exceeding \$10.

"Donating group" is not defined. This permits employees to do what make sense under the circumstances. However, they should work with their Ethics Counselor, because if their scheme stretches the limits of credulity, they will not only embarrass themselves, but also the person whom they are trying to honor. For example, it might be appropriate for each brigade to give a gift to a departing division commander (assuming that he is PCS'ing out of the chain of command); but it would be inappropriate for each battalion to give a gift. Similarly, while it might be appropriate for the general's staff group to give her a \$300 gift upon her retirement, it might be inappropriate for each staff section to do so. This does not, however, restrict various staff sections and other groups from presenting framed certificates of honorary membership, simple plaques reflecting the honoree's service, and similar presentation items of little intrinsic value.

There is a "technical" aspect to the DOD rule. If an employee contributes as part of more than one "donating group," the total value of all gifts given by both donating groups normally should not exceed \$300. For example, if the commander's Executive Officer (XO) contributes to both the gift from the staff group and the gift from his former battalion, the total value of the gifts from the staff and that battalion normally should not exceed \$300. This also means that, if the XO's wife also contributes to the Officers' Spouses Club gift to the departing commander's spouse, the total value of the gifts from the staff and the spouses club may not exceed \$300 **unless** there is in fact a separate and distinct basis for the spouses club gift. For example, perhaps the commander's spouse was the president of the club, and cherished and loved by all

the members for his or her good works; in such a case, the gift from the spouses club would be because of the spouse's personal stature within the military community, not just to honor the general's PCS or retirement, *i.e.*, an indirect gift to the departing officer.

Finally, "donating groups" may not band together to buy the departing commander one **large** gift that is intended to circumvent the normal maximum of \$300. For example, a print that costs \$250 paid for by the officers of the command, which is then framed for \$150 by the non-commissioned officers, could be an improper gift. A \$1,500 set of golf club, with bag, balls and other paraphernalia, would be improper even though a number of individual "donating groups" purchased individual parts of the set, none of them exceeding \$300.

Recently, the Department of Defense changed the *Joint Ethics Regulation* to permit the \$300 limit to be exceeded in certain cases for those special occasions where the superior-subordinate relationship is being terminated. However, we do not believe that this is an exception that should be exercised in the normal course of events.. The gift must still be "appropriate to the occasion." We advise and counsel that \$300 is a good test of what is "appropriate."

### **What to Do if You Receive an Improper Gift?**

The obvious answer is to prevent improper gifts in the first place. The departing official should make it known that there are rules concerning gifts and he expects them to be followed. The members of the command should already have received training and other reminders concerning the rules. The official's Ethics Counselor should be alert to potential problems and provide necessary guidance.

But, what about the gift? There are three options: refuse or return it; pay for it (in full); or accept it on behalf of the Army or the morale welfare fund, as appropriate. Accordingly, if someone received one of the following gifts that were "inappropriate to the occasion," he or she might direct that a \$500 sword be displayed in the post museum; a \$400 clock might adorn the wall of the enlisted club; a \$1,500 set of golf clubs be returned to the donating group (or the officer might reimburse the donating group); and the \$200 coffee service from the local chamber of commerce might remain with the official's office and be used by his or her successors when they entertain official visitors.

Yes, even the \$200 coffee service mentioned above is improper. The JER \$300 figure is not applicable here because this is not a gift from other employees; rather, it is a gift from an outside source and given because of the employee's official position. Different rules apply to this gift; it exceeds \$20 in value and no other exception would permit the departing official to accept it.

### **IV. Conclusion.**

One would instinctively think that the rules surrounding gifts in the office should be relatively simple. For the most part, they are. However, it's the facts that complicate things. For many different reasons, not all of them necessarily laudable, employees want to give their supervisors or other senior employees gifts. And, although the general rule is no gifts, they work really hard to force their situation into one of the exceptions. You are encouraged to seek the advice of your Ethics Counselor if you have the slightest concern about any gift that is offered to you. Finally, we have often found that departing or retiring general officers or senior employees are not interested in groups collecting money and buying them farewell gifts. In such cases, we encourage them to issue such guidance to their personnel. Otherwise, before you PCS or retire, we recommend that you seek the advice and counsel of your Ethics Counselor and direct your Ethics Counselor to ensure that your subordinates are aware of the rules.