

INTEROFFICE MEMORANDUM

TO: Distribution

FROM: Office of General Counsel

SUBJECT: HOLIDAY ETHICS REMINDERS TO INSURE A HAPPY NEW YEAR

DATE: 17 November 2004

Reference: DOD, SOCO Memorandum, "Holiday Guidance on Partying with Contractors and Supervisors," Dated 28 Sep 04

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1. The Office of General Counsel would like to wish you happy holidays and to take this opportunity to provide you with some guidance on common legal pitfalls that often accompany the holiday season.
2. In-house Parties, Open Houses, and Receptions: Employees may hold holiday parties for their office. If such a party is after hours or off-site, employees may not receive overtime or use a government vehicle to go. If the party is during the workday, supervisors may grant employees up to two hours of administrative leave to attend.

Office parties are private events, and therefore may not be paid for with appropriated funds. Attendees may be asked to share in the costs of such parties; however, employee contributions must be voluntary and nominal. Outside sources may not be solicited for contributions, prizes, or gifts for a party. Employees may be authorized a reasonable amount of time to prepare for such parties as a morale enhancing activity.

3. Holiday Decorations and Cards: The Comptroller General ruled that agencies may expend appropriated funds for reasonable seasonal decorations. Expenditures for seasonal decorations within DISA should be limited to those for use in the main entrances to the Agency's buildings, or the work areas where the buildings are shared. Expenditures are not authorized for decorating private areas or areas where the benefit is primarily for the employees in that area. Decorations should not be religious in nature, and should not endorse any particular religious belief.

The purchase, printing and delivery of holiday cards may not be done at the Government's expense unless expressly authorized by statute or regulation. The distribution of holiday cards is considered a personal rather than an official function. Accordingly, holiday cards may not be sent in Government envelopes.

4. Gifts and Contractor-Sponsored Parties: **General Rule** - DISA personnel must not solicit or accept gifts from prohibited sources or gifts provided in connection with performance of their official duties. The term "gift" includes any gratuity, entertainment, favor, hospitality, discount or other item having monetary value. It does not include greeting cards and items with little intrinsic value or modest items of food and refreshments, like soft drinks, coffee and donuts, which are not offered as part of a meal.

When in doubt, we recommend you seek additional guidance from an ethics counselor.

a. Gifts and entertainment from "prohibited sources" (e.g., contractors). DoD standards generally prohibit acceptance of anything of monetary value from a "prohibited source," that is, any person who:

- (1) is seeking official action by the employee's agency;
- (2) does or seeks to do business with the employee's agency;
- (3) conducts activities regulated by the employee's agency;
- (4) has interests that may be substantially affected by performance or nonperformance of the employee's official duties; or
- (5) is an organization a majority of whose members are described in (1) through (4), above.

Exceptions: There are many exceptions to the above general prohibition. For example, employees may accept the following:

- (1) Unsolicited gifts, other than money, with a market value of \$20 or less per event or presentation (to a total of \$50 per year from a source), or
- (2) invitations to events where the event has been determined to be a *widely attended gathering* by the DAEO.

CAVEAT: Attendance at holiday parties sponsored by contractors may present the appearance that the Government personnel are biased toward the contractor--regardless of the dollar value of the ticket.

b. "Prohibited sources" restrictions on accepting gifts and other opportunities.
Remember that many contractors have similar ethics or business practice rules that restrict their acceptance of gifts from Federal employees. Take these rules into consideration before offering contractors gifts and/or opportunities they may not accept.

c. Gifts between employees. **General Rule** - Normally, superiors may not accept gifts from subordinates or employees who receive less pay. However, there are several **exceptions** to this general rule:

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- (1) On an occasional basis (like during the holidays) superiors may accept gifts (other than cash) of \$10 or less from a subordinate;
- (2) Superiors can accept food and refreshments shared in the office;
- (3) Superiors may accept personal hospitality in the residence of a subordinate of the type and value customarily given on such an occasion; and
- (4) Superiors may accept gifts of the type and value customarily given for personal hospitality at their residences.

There are no restrictions on gifts given to peers or subordinates; however, the general principles of Government Ethics apply. Remember, contractors are not peers or employees.

d. Personal gifts and entertainment. Gifts and entertainment from friends may be accepted if it is clear that they are motivated by a personal relationship and create no appearance of impropriety. Since personal and business relationships often intertwine, the propriety of retaining a gift or accepting entertainment from a friend who also has business before DoD requires careful consideration of many factors, including:

- (1) the relationship between the recipient and donor,
- (2) whether there is reciprocity in exchanging gifts or providing entertainment, and
- (3) whether the gift or entertainment is a personal expense or is paid for by the donor's employer.

e. Gift exchanges and contractors. Contractors may be invited to participate in gift exchanges and should follow the same \$10 or less market value limit that is placed on gifts between employees.

5. Religious Issues: It is important for employees and managers alike to be careful not to place themselves in the position of appearing to favor or disfavor a particular religion - especially when acting in their official capacities. These considerations should be carried over even to those types of unofficial functions, such as parties, open houses and receptions that are held in the workplace.

The White House issued "Guidelines on Religious Exercise and Religious Expression in the Federal Workplace" (see <http://clinton4.nara.gov/textonly/WH/New/html/19970819-3275.html>), on 14 August 1997, which established the general principle of freedom of religious expression that all employees should be treated "with the same respect and consideration, regardless of their religion (or lack thereof)." The Guidelines direct that agencies will not discriminate against employees on the basis of religion, require religious participation or non-participation as a condition of employment, or permit religious harassment. Also, agencies are required to accommodate employees' exercise of religion unless such accommodation would impose an undue hardship on the conduct of the agency's operations.

The Guidelines also remind agencies that the First Amendment of the Constitution "prohibits the Government--including its employees--from acting in a manner that would lead a reasonable

observer to conclude that the Government is sponsoring, endorsing or inhibiting religion generally or favoring or disfavoring a particular religion." For instance, the Guidelines indicate that it would be inappropriate for a supervisor to open an official staff meeting with a prayer.

Similarly, a supervisor should not circulate a memo announcing that he or she will be leading a lunch-hour Bible class that employees should attend in order to participate in a discussion of career advancement that will convene at the conclusion of the class.

Please review the Guidelines for additional guidance.

6. Internal Fundraising: **General Rule** - Fundraising solicitations conducted by organizations composed of civilian employees or members of the Uniformed Services among their own members for organizational support may be conducted in the workplace, but should be limited in number and scope during the official Combined Federal Campaign (CFC) period in order to minimize competition with CFC.

In order to endorse fundraising for moral, welfare, and recreation, the agency head must grant approval after consultation with the DAEO. The DISA General Counsel has concluded that non-CFC fundraising activities conducted during the CFC period (5 October to 7 December 2004) to support holiday parties are not extraordinary circumstances, could detract from the CFC, and are therefore prohibited during the six-week campaign (ending 7 December 2004).

7. Alcohol Consumption: Alcohol consumption at holiday parties is strictly prohibited unless rigorous requirements are met and prior written approval is received from the Chief of Staff, the General Counsel, and Facilities.

8. Conclusion: This guidance only highlights common questions that arise in the Federal workplace. If you are unsure or have additional questions, contact your ethics counselor.

Additional guidance can be obtained from the Department of Defense (DoD) Standards of Conduct Office (SOCO) memorandum, "Holiday Guidance on Partying with Contractors and Supervisors," (http://www.defenselink.mil/dodgc/defense_ethics/index.html), dated 28 September 2004.

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If you have any questions or concerns, please seek further guidance from the Office of General Counsel at 703-607-6091 (DSN 327) or generalcounseldisa@ncr.disa.mil.

Best wishes for a safe and happy holiday season!



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