

18 U.S.C. § 209: Intent Matters

Can the employee get paid... again?

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18 U.S.C. § 209(a) Salary of Government officials and employees payable only by United States –

(a) Whoever receives any salary, or any contribution to or supplementation of salary, as compensation for his services as an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, from any source other than the Government of the United States, except as may be contributed out of the treasury of any State, county, or municipality; or Whoever, whether an individual, partnership, association, corporation, or other organization pays, makes any contribution to, or in any way supplements, the salary of any such officer or employee under circumstances which would make its receipt a violation of this subsection... Shall be subject to the penalties set forth in section 216 of this title.

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SCENARIO 1

The following hypothetical is not associated with or presented by the Walt Disney Company. Also, this is a *different* Octomom. We are, however, hoping to inspire a new reality TV show...

Snow Octomom and the Seven or Eight Octuplets

Two months ago, the Senate confirmed Snow Octomom to the position of Assistant Administrator for Notorious Publicity at the Child Safety Products Administration (CSPA). Upon confirmation, Snow Octomom (“Soco” as her friends call her) quit her job as a highly paid executive at Magical Republic, Inc., and listed her lavish fantasy castle in Wisneyglobe Park for sale. She only recently bought this castle with a jumbo mortgage and, as a down payment, the proceeds from selling the exclusive rights to her story to several cable networks. Unfortunately, the market for lavish fantasy castles has been depressed lately, and Soco’s estate may remain on the market longer than she expected. The expense of maintaining two residences in Washington and Florida is putting a strain on Soco’s budget, especially while on a frozen federal salary. Fortunately, Soco has a benevolent and generous Fairy Godmother (of sorts): Cinderblockella, a fantastically wealthy baroness who owns a baby car seat company but is unemployed and has more than enough time and gold on her hands to make a project of Soco. Soco and Cinderblockella met six years ago at a ball that Soco crashed with both the octuplets and a sizeable reality show film crew in tow. Soco and Cinderblockella soon discovered that they shared a passion for reality TV shows. She and Cinderblockella have dined together three times since then. On two of those occasions, Cinderblockella picked up the tab so they could dine in the pricier “reality TV celebrity” restaurants of the always elegant Theme District of Orlando. They have exchanged holiday cards, and Cinderblockella once gave Soco a T-Shirt with the logo of her favorite show: **I heart “Cooking with America’s Next Millionaire Ice Roadhouse Apprentice of love –Desperate Bachelor Makeover Edition.”** When Cinderblockella learned of Soco’s plight, she offered to purchase the mortgage on Soco’s castle and carry Soco interest-free until a buyer is found. When asked why she is offering Soco this interest-free loan, Cinderblockella expressed sympathy for Soco’s financial difficulty, adding that she fears Soco will suffer a financial loss from selling at current market prices.

1. What facts are relevant to each of the following factors for analyzing intent with regard to the interest-free loan? Also, are there any additional facts that you would like to know?

a. Express Intent

e. Employee Payor

b. Ability to Influence

f. Similar Payments to Others

c. Pattern of Dealings

g. Payor Motivated by Sympathy

d. Official Position

h. *Bona Fide* Public Service Award

Variation (additional facts on PowerPoint screen)

2. Do both of Cinderblockella's statements express the same intent regarding this loan? If so, what is the intent that underlies both statements? If not, which intent "trumps" the other?

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SCENARIO 2

Magical Republic

As you know, Soco was an executive at Magical Republic, Inc. Magical is a very small child safety product manufacturer. Its sole product line is a popular line of rubber baby buggy bumpers. Last week, Magical's board voted to exempt Soco from its written policy of paying bonuses only to employees who still work for the company on October 31, the date on which bonuses are paid.

3. Are there any additional facts that you would like to know?

Variation (additional facts on PowerPoint screen)

4. What is the significance of the written policy?

5. What facts are relevant to each of the following factors for analyzing intent with regard to the bonus?

a. Express Intent

e. Employee Payor

b. Ability to Influence

f. Similar Payments to Others

c. Pattern of Dealings

g. Payor Motivated by Sympathy

d. Official Position

h. *Bona Fide* Public Service Award

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REFERENCES

- DAEOgram DO-02-016 (Jul. 1, 2002)
- United States v. Project on Gov't Oversight, 616 F.3d 544 (DC Cir. 2010)
- 5 C.F.R. § 2634.204(b)¹

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EIGHT FACTORS FOR ANALYZING INTENT UNDER 18 U.S.C. § 209

a. Express Intent

e. Employee Payor

b. Ability to Influence

f. Similar Payments to Others

c. Pattern of Dealings

g. Payor Motivated by Sympathy

d. Official Position

h. *Bona Fide* Public Service Award

¹ “Gifts based on a personal relationship. An employee may accept a gift given under circumstances which make it clear that the gift is motivated by a family relationship or personal friendship rather than the position of the employee. Relevant factors in making such a determination include the history of the relationship and whether the family member or friend personally pays for the gift.”