

Information Paper

SUBJECT: Gift Rules Between Employees - Birthdays, Holidays, PCS/ETS

1. Purpose. To summarize rules regarding gift giving/receipt between Federal employees, including Soldiers, under DoD Regulation 5500.07-R, The Joint Ethics Regulation (JER).

2. General Rule. An employee (including a Soldier) shall not:

a. Give a gift or solicit a contribution for a gift for a "superior" (i.e., supervisor or those in supervisory chain), or

b. Accept a gift from a lower paid employee, unless the donor and recipient are personal friends who are not in a superior-subordinate relationship.

3. Exceptions to the General Rule.

a. Occasional Basis Gifts. Employees may give or receive gifts on an occasional basis, including traditional gift giving occasions, such as birthdays and holidays. This includes:

(1) Minor contributions of food that will be consumed at the office, meals at someone's home (of a type and value typically given to personal friends), and customary gifts, such as a bottle of wine, brought when invited to another's home.

(2) Occasional, small gifts (other than cash) having a value of \$10 or less on appropriate occasions, such as Christmas or birthdays, or upon return from a vacation or TDY. Examples include coffee mugs, souvenirs, and birthday cards.

b. "Special Infrequent Occasions." Gifts on special infrequent occasions (such as when the superior is departing the command) may be given, but should be appropriate. "Appropriate" means that the gift value may not exceed \$300 per donating group. As a general practice, it is wise to stay well below the \$300 limit, particularly for smaller units.

(1) A donating group is comprised of all contributors to that group gift. For example, for a departing CG, one donating group may be all of the enlisted Soldiers and another donating group may be all of the officers.

(2) A contributor should not belong to two donating groups. If a contributor gives to two donating groups, then the value of the gifts from the two groups is aggregated as if it were from a single donating group - and the \$300 limit applies to the total value of the gifts from those combined groups (JER 2-203a(2)).

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(3) The cost of food, entertainment and refreshments (if any) provided to the person and personal guests to mark the occasion upon which the gift is presented does not count against the \$300 gift limit.

(4) The ethics rules treat gifts given to the spouse of a departing official as if they were given directly to the official. Therefore, all of the rules discussed apply to gifts to spouses. Moreover, the total value of gifts presented to the departing official and their spouse by a donating group may not exceed the \$300 gift limit.

(5) In the past, ethics rules recognized an exception to the \$300 limit on gifts to superiors from subordinates; gifts could exceed this limit if the gift was appropriate for the occasion that terminated the superior-subordinate relationship, and was uniquely linked to the employee's position or tour of duty and commemorated the same. However, the Office of Government Ethics has determined that this exception, often referred to as the "Perry Exception," is no longer valid. All such gifts must adhere to the \$300 limit without exception.

(6) An employee cannot solicit more than \$10 from another employee for a group gift for a superior (JER 2-203b); however, an employee may contribute more than \$10 if he or she chooses.

(7) Solicitations for gifts to a superior must be completely voluntary. Solicited individuals may decline to contribute - and they should be advised of that fact.

(8) To avoid even the appearance of improper pressure, no one should keep a list of contributors. Preferably, someone junior in the organization should handle the solicitation and contributions.

(9) Contributions may not be solicited, or even accepted, from a contractor or their employees, even if the contract employees physically work within a military organization.

(10) To avoid unplanned deficiencies in the "gift fund," it is recommended that no one purchase the gift until the contributions are collected.

4. Conclusion. Whether for "occasional basis" or "special infrequent occasions", use discretion in gift giving. If there are any questions, seek early guidance from an Ethics Counselor with the USARJ Office of the Staff Judge Advocate, 263-3372.

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