

## Federal Employees Risk Careers Over Freebies

By Mathew B. Tully

A cynic might say: "Nothing in life is free." For federal employees, this statement could be especially true, considering that in some cases accepting a gift could end up costing them their jobs.

It's easy to underestimate the gravity of the federal government's prohibition against gifts detailed in the Standards of Ethical Conduct for Executive Branch Employees (5 C.F.R. Part 2365). That may have been the case at the scandalplagued General Services Administration, where employees reportedly accepted pricey gifts from an outside events planner tied to a lavish \$823,000 training conference near Las Vegas. According to the Washington Post, these gifts included concert tickets, flower deliveries and free hotel rooms.

It is worth remembering that federal employees have landed in hot water for accepting gifts of lesser value. Before accepting gifts, federal employees must pay particular attention not only to what is being offered as a gift, but also whom the offer is from and the potential motivations of the person making the offer.

The Standards of Ethical Conduct broadly defines "gift" as "any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value."

Depending on the market value of a gift, an employee may or may not be able to accept a gift from what is called a "prohibited source." A prohibited source could be any entity or person who wants something from the employee's agency; does business or wants to do business with that agency; is regulated by the agency; is affected by the agency's work; or is an organization comprised mostly of any such parties.

Employees are generally prohibited from accepting gifts valued at more than \$20 on a single occasion and may not accept an aggregate \$50 in gifts from a particular source over each calendar year. Depending on the circumstances, an employee may be able to accept a gift from someone at a prohibited source but with whom he or she has a personal relationship, according to the Standards of Ethical Conduct.

Some federal employees accept inappropriate gifts without realizing the gifts are from a prohibited source; other employees underestimate the value of the gift. For example, in *Baker v. Dept. of Health and Human Services* (1990), the U.S. Court of Appeals for the Federal Circuit upheld the removal of a Social Security Administration (then part of HHS) supervising computer specialist who revealed confidential government information and accepted a gratuitous meal from a potential subcontractor.

These offensives stemmed from a lunch the specialist had with a personal friend who had left the agency for a private sector job. The president of the friend's employer also attended the lunch and inquired on the status of a contract the agency had put to bid. The specialist got upset with his friend over this questioning, got up to leave, offered to pay for lunch, but the other two men said they would take care of it. The specialist challenged the gratuitous meal

charge, saying the meeting was simply lunch between friends. He claimed he had no way of knowing he was having lunch with a potential subcontractor. However, considering where the two men worked and their discussion of the contract, the Federal Circuit said he should have known otherwise.

Similarly, in the Merit Systems Protection Board case of *Sher v. Dept. of Veterans Affairs* (2004), the Board upheld a 45-day suspension imposed by the VA on a clinical pharmacist who accepted free samples of Lipitor from Pfizer representatives. An agency investigation found the pharmacist had solicited and received 672 10-mg tablets of the cholesterol-lowering medication. Concurring with an administrative judge, the board found the free Lipitor samples qualified as a gift and Pfizer qualified as a prohibited source because of its business relationship with the VA.

Federal employees charged with misconduct for soliciting or accepting gifts should immediately consult with a federal employment attorney. Depending on the circumstances, a lawyer could defend the employee against claims that an item qualifies as a gift or that the employee knowingly accepted a gift from a prohibited source.

Mathew B. Tully is the founding partner of Tully Rinckey PLLC. He concentrates his practice on representing military personnel and federal employees and can be reached at [mtully@fedattorney.com](mailto:mtully@fedattorney.com)

. To schedule a meeting with one of the firm's federal employment law attorneys call 202-787-1900. The information in this column is not intended as legal advice.