Opinion

Bottom Line

Under the gift analysis, the employee would be allowed to accept this gift and attend this dinner.

Facts:

The employee and his spouse were invited to attend a dinner at the home of an executive of the wife's employer. The wife is employed as a member of the budget department A Corp, a contractor for the agency. The dinner is an annual party for the financial employees of A Corp hosted by the Chief Financial Officer.

The employee has a recusal in place for all matters involving A Corp, since it is their spouse's employer.

Laws/Regulations:

Under the Standards of Ethical Conduct, an employee is prohibited from soliciting or accepting, directly or indirectly, (1) a gift from a prohibited source or (2) a gift given because of the employee's official position. 5 CFR 2635.202(a)-(b).

Under the gifts analysis, we consider:

- Whether the item offered is a gift, 5 CFR 2635.202(b);
- If so, whether the gift is from a prohibited source or given because of the employee's official position, 5 CFR 2635.202(d); and
- If so, whether there is a regulatory exception that would permit acceptance of the gift from the prohibited source, see 5 CFR 2635.204.

Additionally, employees should consider the appearance or optics of accepting a gift, even when permitted under the Standards. Specifically, to promote public trust, employees should consider declining otherwise permissible gifts if they believe a reasonable person with knowledge of the relevant facts would question the employee's integrity or impartiality as a result of accepting a gift, per 5 CFR 2635.201(b)(1). Factors to consider here include whether: (1) the gift has a high market value; (2) the timing of the gift creates the appearance that a donor is seeking to influence an official action; (3) the gift was provided by a person who has interests that may be substantially affected by the performance or nonperformance of the

employee's official duties; and (4) acceptance of the gift would provide the donor with significantly disproportionate access. 5 CFR 2635.201(b)(2).

Analysis:

First, we evaluated the appearance or optics of accepting a gift. In particular, employees should consider declining permissible gifts if they believe a reasonable person with knowledge of the relevant facts would question the employee's integrity or impartiality as a result of accepting a gift. 5 CFR 2635.201(b)(1). It is never inappropriate and frequently prudent for an employee to decline a gift if acceptance would cause a reasonable person to question the employee's integrity or impartiality. 5 CFR 2635.204

In terms of appearance, it could be problematic for a federal employee to go to a private dinner at the house of an executive of a company that does business with their agency. However, the appearance concerns could be mitigated by the fact that the invitation is based on the spouse's employment and the employee having a recusal in place.

The analysis here is what a reasonable person with knowledge of the relevant facts would think.

Overall, we do not believe that a reasonable person with knowledge of all relevant facts would necessarily question the employee's impartiality in going to the dinner. But, it is never wrong to decline a gift to ensure no members of the public question the employee's integrity and impartiality.

The invitation is both a gift and from a prohibited source. A gift is "any item having monetary value," which includes hospitality. 5 CFR 2635.203(b). Additionally, the host, the employee's wife's boss, as the CFO of A Corp, is a prohibited source because A Corp does business or seeks to do business with the agency. 5 CFR 2635.203(d). Specifically, A Corp is a contractor of the agency.

An exception to the gift rule applies that would permit acceptance of the invitation. Specifically, an employee may accept meals resulting from the employment activities of an employee's spouse when it is clear that such benefits have not been offered or enhanced because of the employee's official position. 2635.204(e)(2). The employee's spouse has been invited to an annual event for the finance employees of A Corp, hosted at the CFO's house. There is no indication that the offer or enhancement is related to the employee's federal position.

Conclusion:

From our analysis, the employee and his spouse may accept the dinner invitation.

Other Considerations/Recommendations:

We recommend taking this as an opportunity to remind the employee of his recusal obligations. Also consider confirming with the employee's supervisor that the recusal is in effect.