series I'm Kenisha Cunningham and today we have Cheryl C peki who will be

0:07

discussing the rules surrounding gifts between employees but before we begin I have a couple of administrative

0:13

announcements next week for our Advance practitioner series we will discuss

0:19

recently released OG guidance we will discuss the application of the employee

0:24

Benefit Plan exemption specific questions that OG has recently received regarding how the gift

0:31

rules apply to certain events and guidance on what types of prepaid gift

0:36

cards are considered to be cash equivalent in addition we will also have

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at the end of this month a post-employment moo so look for those announcements to be released in the next

0:47

few days and for those folks that's on the Google Hangouts if you would like to ask a question you can do so by typing

0:54

your question in the right right side of the um screen in the panel window

1:00

and with that I'll turn it over to Cheryl thanks Kenisha very much um welcome everybody um I'm pleased to be

1:07

able to deliver to you uh the first uh I think ever perhaps a presentation that

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OG's done on gifts between employees I saw there was a rather robust uh registration um on Max and that was sort

1:20

of exciting and I think it's not because this provision is particularly onerous or difficult I think it's just because

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OG has not really talked to you all about it too much um um and I think I

1:31

think the gfts between employees uh section sometimes uh I don't want to say it gives ethics officials heartburn but

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I think it's one of the set the sections that it's not quite consonant with the rest of the standards of conduct because

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it really is an internal looking set of rules it's really governing what uh fed

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federal employees may do among themselves as opposed to you know Visa V the the private sector um and to that

1:56

extent it's sort of a set of housekeeping type of provisions um that that being what it may um I I I

2:04

think we we all have to be as aware of these and as on top of these as we are of any other part of the standards um

2:11

notwithstanding that they're they're they're just a little different than the rest of the standards of conduct so what I'd like everybody to do if you can um

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for those of you who are on the phone I will try to let you know as I'm advancing the slides because I know that you're just you're just hearing me talk

2:25

um and for those of you on the hangout you'll obvious obviously see as I process through them but if everybody could get out the the subpart C of the

2:32

standards of conduct um we're going to start with uh a little bit of a an

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orientation to the actual restrictions themselves because um I think that the

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way that they're written um it's not intuitively obvious um how these

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restrictions apply and so I'd like to sort of break them down for you into two

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sort of discrete pieces so if we could get a regs out um and and if you can

**Gifts to Superiors**

3:00

follow along with me in the slide deck um I've just I advaned to the second

3:05

Slide the gift between employees Provisions are really broken down into two discrete pieces the first part of

3:13

the restrictions um deals with and it's entitled you know gifts to superiors so

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the first part of it in 2635 302a is focusing on giving the giving

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part of the gifts between employ employes provisions and so it's dealing with you

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know th those times when you you want to congratulate your boss or tell your

3:39

boss how much you appreciate them um and what the Restriction says is um and I'm

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on slide three now folks um an employee may not directly or indirectly give a

3:51

gift to or make a donation toward a gift for an official Superior so clearly here

3:58

we're talking about you individ as an employee if you want to directly decide to give a gift to your official Superior

4:03

it's addressing that but it's also addressing whether or not you are permitted to actually donate um to a

4:09

collection for a gift to your official superior but it doesn't stop there the

4:15

giving restrictions don't stop there um they also address themselves to soliciting others for contributions

4:22

toward a gift and that comes in 302 A2 and for folks on the phone I'm at slide

4:28

four an employee may not solicit a contribution from another employee for a

4:34

gift to either his own or the other employes official Superior so now we're

4:40

talking about not only are we restricting your ability individually to donate we're also restricting your

4:46

ability to pass the hat and ask others to donate whether or not it's for your

4:51

own Superior or for for anybody else's um official

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Superior so that's the first set of of restrictions and it seems interesting

5:03

because where where it's putting the prohibition it's putting the prohibition on the subordinate employee um and it's

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not until you get to this second set of prohibitions where we actually start talking about the the superiors what

5:15

what restrictions apply to a superior actually receiving a gift from a

5:22

subordinate um and if we look at the language in this one it's actually a

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little more evolved than than you might think um and I'm on slide six now um

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generally speaking it's saying you can't accept directly or or indirectly accept

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a gift from an employee notice receiving less pay so now we've moved from this

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notion of superior subordinate um which I think everybody kind of gets we get the sort of it's an

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inherently coercive relationship between a superior and a subordinate and so we want to limit the ability ility of that

6:00

sort of authority and power to be able to be perhaps misused in a way that

6:05

that's coercive that makes subordinates feel like they have to do these things but this isn't just dealing with

6:10

superiors and subordinates this is reaching to employees who receive less

6:16

pay now that gets tempered a little bit because it says you can't do that

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unless and the unless provision says the two employees are not in a subordinate official Superior relationship so this

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exception if you want to say or this carve out is pretty much recognizing okay so if it's not a superior

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subordinate relationship we're not we're not as worried we're not as concerned and there's a personal relationship

6:43

between the two employees that would justify the gift so this is obviously trying to recognize that not every time

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there could be a gift exchange between a higher and lower paid employee is there necessarily something that that we

6:57

should be concerned about and neither should we necess necessarily prohibited now one thing I wanted to point out here

7:03

um because I think we do get some questions about this is how personal does the personal relationship have to

7:09

be in order to be able to sort of Avail yourself of this car Val and OG's

7:14

position on this has been for the most part um I think a little less um a

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little less restrictive if you will than we have like in the personal relationship exception in the gifts from

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outside sources in gifts between employees um we have said that you don't have to necessarily be BFFs

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and for for gifts between employees you don't have to be best friends and you don't even necessarily have to socialize

7:38

outside of the office um that for the gifts between employees Provisions I mean I think it's just a notion if

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there's a general professional collegiality um that that sufficient to

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to allow you to to Avail yourself of this carve out um when there's no

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Superior subordinate relationship um so you go into the next slide which

8:02

is slide 11 now I know that that provision I think has always puzzled me a bit um and I think it puzzles a lot of

8:09

people so I did a little bit of spelunking before um I before I did this session before I was I put this session

8:16

together because I wanted to try to figure out like where does this come from um and for those of you who may not

8:21

know these gifts between employer Provisions in the standards of conduct are based in statute and the statute is

8:27

5 USC 7351 and so I started doing a little bit of research and had some help with that

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doing some research on this um and I found out that actually the the law has

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changed relatively little since it was first enacted um back in February 1 of

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of 1870 um and it was it was enacted um in 1870

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and it was entitled um an act to protect officials in government employee

9:00

and I wasn't able to identify or to find out whether or not there was any particular Scandal or any particular

9:08

incident that necessarily prompted Congress to enact this legislation but

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we were able to find um a couple of newspaper articles that were actually quite

9:20

revealing um and I'm going to read them in part to you um now I've I've I've excised or I've taken a few pieces out

9:27

of this this rather lengthy um it was like an op-eds type of piece which came from the evening telegraph and it was

9:33

published in on uh January 14th of 1870 which was before the act itself was actually um made into passed both houses

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of Congress this was when the bill um was pending before the Senate and the evening telegraph said this bill is

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aimed at one of the standing nuisances of the day votive offerings to the vanity or vanality of leading officials

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may be very acceptable to the recipients but they once impose an onerous tax upon their underpaid assistance and tend to

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the Dem demoralization of Public Service it goes on to say and I found

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this kind of fascinating it would be well if the example set by Congress were followed by

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States cities and corporations for their employees are also frequently victimized

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the gift Enterprise business has been carried to a ludicrous and dangerous excess and it should be stopped in every

10:27

quarter so I think that whether or not there was any particular Scandal it is very clear

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that there was a pattern of of behavior or or some sensibility in the public eye

10:44

that um government employees lower paid government employees were being strong armed by their superiors to be to be

10:51

providing gifts um to their superiors and I I think if we understand also kind

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of the lay of the land in 18 70 um this was uh this was a time before

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the pend Pendleton Civil Service Reform Act so this was back when basically um

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you know everything was based on political affiliation it was a political spoil systems that's how you got a

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government job um there was no merit systems protection there was no Civil

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Service per se so it could be that the environment was such that it lent itself to to much more onerous and much more

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egregious acts of of coercion uh than than we would ever experience today but

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I think it gives you a sensibility about when when this this this law why why

11:37

does it read the way it reads um and I wanted to show you that this is the language from the 1870 um statute as it

11:45

was then placed into section 1784 of revised statutes and it says no officer

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Clerk or employee of the United States government employee shall at any time solicit contributions from other

11:56

officers clerks or employees in the government service for a gift or present to those in a superior official position

12:01

well there's our our our solicitation for contributions piece we still have that nor shall any such officials or

12:07

clerical superiors receive any gift or present offered or presented to them as a contribution from persons in

12:13

government employee notice this receiving a less salary than themselves

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so even back in 1870 when it was first enacted this this receiving piece

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reached not to just to Superior subordinate relationships but to the the

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pay the pay level um of the two employees and then finally nor shy officer or clerk make a donation as a

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gift or present to any official Superior so those three pieces that I just talked about that are in our current rag pretty

12:43

much are are wholesale sort of from The Act of 1870 um this last piece though I think

12:49

is really Illuminating every person who violates this section shall be summarily discharged from the government employee

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so Congress obviously took this very very seriously um such that you could be summarily dismissed from

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government employment um for a violation of this provision um to further sort of bolster

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I think an an understanding of of what the relevance of these Provisions are and why they're important um I found a

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Supreme Court case uh from 1882 now this would have been some 12 years after the 1870 Act was enacted now

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the case itself was not dealing with the constitutionality of of The Act of 1870 it was dealing with a sort of a related

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statute which was a Prohibition on uh requesting giving or receiving uh monies

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or Properties or things of value for political purposes among government employees and in this case um chief

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justice weight who who argued for the constitutionality of that that other provision basically cited a whole Litany

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of what he said were similar relevant provisions and was effectively making the same argument

14:02

justifying those as he was doing for the for the particular for the particular

14:07

act that was the subject of of this particular court case and it really reaches I think to the notion that this

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is about government as an employer maintaining certain rights with respect

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to managing the conduct of of its employees and he said in his in his uh

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in his argument uh the evident purpose of Congress and all this class of Ena ments has been to promote efficiency and

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integrity in the discharge of official duties so there we got efficiency of service we still have that it's sort of

14:36

a concept of you know in Merit systems protection um and to maintain proper discipline in the public

14:43

service and on to the next slide which is slide 17 a feeling of Independence

**A Feeling of Independence**

14:49

under the law conduces to faithful public service and nothing tends more to take away this feeling than a dread of

14:55

dismissal if contributions from those in public employment May may be solicited by others in official Authority it's

15:01

easy to see that what begins as a request may end as a demand and that a failure to meet the demand may be

15:08

treated by those having the power of removal as a breach of some supposed Duty so that's you know that's another

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rationale or another um way of sort of getting our heads around like what the

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problem was and and why why it's still relevant today um not meaning to belabor

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this but I I I find all of this rather interesting and I think it helps ground us um in 1899 now this is now 29 years

15:36

after the enactment of the Act of 1870 The Washington Post had an art had an

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oped that said you know is this law honestly observed so 29 years after the enactment we still have people questioning whether or not this law is

15:48

actually being abided by it says we often wonder whether this law is strictly observed in the spirit as well

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as in the letter by those To Whom It explicitly refers there are so many expedients by which a chief Clerk or the

15:59

head of a bureau or some other functionary of a humbler Kind can extort tributes from his unhappy subordinates

16:05

or punish them for ignoring his hints in that direction there are so many pretexts upon which offerings can be

16:11

invited so many occasions when it may be made obvious that offerings will be acceptable and there is so much human

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nature in the Departments and as a rule the natural thing is the thing that happens so again

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you know clearly not withstanding this law there was still perception that

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there were problems with people being forced to contribute

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to their superiors or provide gifts to their superiors

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um so in 1966 was when when this law went into Title 5 of of chapter 73 of

**A History Lesson**

16:50

Title 5 um and it looks a lot more like it does the current day version um they

16:57

changed the the samaro Le being dismissed to shall be removed from the service and then in the in the 1989 um

17:05

the ethics author uh the ethics the 1989 ethics rule uh law I'm

17:12

uh I'm I'm I'm losing I'm I'm forgetting what that what the name it is um was when was when Congress basically

17:19

gave OG the authority to create exceptions so up until

17:24

1989 this act was in place without the ability to have the exceptions that we currently have um in the regulation

17:33

um ethics Reform Act that's what I was trying to think of sorry um and so now you can see that really

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since 1870 there's been very little change to the law but OG has had the ability to create some exceptions to

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sort of mitigate what otherwise can appear to be a rather Draconian uh law

17:52

um and I think that one of the things that that we we need to think about is is a recognition of human nature um I

18:00

think the Washington Post article was sort of trying to indicate that gifts between superiors and subordinates is

18:06

almost invariably uh pernicious or or mal malign and I think what our U

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exceptions to the role and the fact that we were given the ability that create exceptions to the rule shows is it is

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human nature to give gifts and we do have uh an environment in our workplaces

18:23

where there is a level of collegiality a and human beings are motivated by a lot of good things sometimes when they want

18:29

to give gifts which include compassion um includes you know uh C celebratory um

18:35

sentiments um and so that's what our our current regime is trying to recognize I think is sort of the human the good

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human nature part of human interactions and not strictly the the more cynical or

18:47

or malign aspects of human nature so having given you a little bit of a history lesson maybe more of one than

18:52

you actually had wanted um what I'd like to do now is to to go into some of the exceptions and talk about them

**General Exceptions**

18:59

um in terms of of some actual concrete questions that we've get some recurring questions that we've gotten about how

19:05

those exceptions actually apply to the restrictions so the first set of

19:11

exceptions um as you're well aware are ones they're called they're titled General exceptions but I like to call

19:18

them sort of the occasional gifts exception um and if you if you look at

19:24

uh 2635 304a this is is where the occasional

19:30

gifts exceptions are found I'll give you a minute to get there if you have the the compilation of

19:36

the code of federal regs I'm on page 592 so the general exceptions are saying

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on an occasional basis which includes any occasion on which gifts are traditionally given or exchanged the

19:49

following may be given to an official Superior or accepted from a subordinate or other employee receiving less pay

19:56

okay so we're saying on an occasional basis it does doesn't only have to be restricted to traditional giftgiving

20:02

occasions like birthdays and holidays and boss's day but um but it also

20:07

includes those types of traditional giftgiving occasions the first is items

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other than cash that that are $10 or less um food and refreshments to be

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shared in the office among employees personal Hospitality that you would provide in your residence and then

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if you were invited to someone's residence it would include any item that's given in receipt of personal

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hospitality and then we have the the the leave transfer for program is being acknowledged in in this

20:39

exception um so I think it's best to to sort of like fet these things out mostly

**Questions**

20:45

by actually looking at a few questions so on on slide 22 um the first question

20:51

that and we get this a lot is um Can employees go in together um to buy a gift for a super

20:58

supervisor on a traditional occasion so for example on boss's on boss's day or

21:04

the boss or your supervisor's birthday Can employees uh contribute money toward

21:10

a gift to their supervisor and the and the quick answer to that is no

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and the the reason for that at least in terms of the regulation the way the

21:23

regulation is written is when we talk about being able to make a voluntary

21:28

contrib tion which is to say to be able to donate toward a gift to an official

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Superior the regulation stipulates only two circumstances in which employees can

21:39

pass the hat to other employees and employees can contribute to the Hat being passed for a gift to an official

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Superior and that's on special and frequent occasions and for food and refreshments that are to be shared in

21:53

the office and by definition anything that that that is happening on a

21:58

tradition occasional basis is not going to fit into one of those two opportunities

22:05

where the regulation permits you to pass the hat and for employees to donate so a group of employees could not

22:13

go in together for example to buy a 10 a single $10 gift for their

22:18

supervisor each individual employee can give the supervisor up to a gift up to

22:24

the value of $10 but you could not collectively contribute toward a $10 gift for

22:30

example um and just for purposes of being able to explain that to yourself

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and to your employees um the issue here is frequency the issue here is trying to maintain

22:42

some sense of I think order in the in the office and to limit the number of

22:48

times that people can be hit up for contributions for various insundry uh

22:54

things um there are there are in every I think in every office some folks who are

22:59

very very generous you know very um uh big gift givers and that there's no

23:06

opportunity that they like to allow past that could you know could be an opportunity for a gift giving that they

23:11

that they don't want to take advantage of and I don't mean any bad motivations but there are folks who are much more

23:17

inclined to give gifts than there are others um and I think that this provision is simply designed to minimize

23:24

the number of times that employees can be solicited for for or a gift for for

23:29

an official Superior um the second question I have

23:35

here is how about splitting the cost of the supervisor's lunch like if we wanted to take our boss out for lunch or we

23:41

somehow wanted to buy food for our supervisor would we be able to split the cost of the supervisor's lunch um I

23:48

think there are a couple of things that that you have to ask yourself here first the first question for that I would want to know is um what is the occasion

23:56

that's being celebrated um if it is if it if it constitutes some special infrequent occasion then you can Avail

24:04

yourself of that and you could make donations toward the lunch and you could split the cost of the lunch because it's

24:09

a special and frequent occasion if it's not a special frequent occasion then my

24:14

question would be well where is the lunch taking place you know if the lunch is outside of the building in a

24:20

restaurant then we would say no that you wouldn't be able to just split the cost

24:26

of the of the supervisor's lunch among whom never decided to go out with the supervisor to lunch um if it's in the

24:33

office um and it's going to be then I would argue then maybe you could because

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then we're looking at food and refreshments to be shared in the office among several employees so instead of

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taking the supervisor out for lunch you could for example order food in and you

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could split the cost of the food by ordering the food in um because we have said that um food

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and refreshments be shared in the office does not have to be in kind that you can collect donations to purchase food and

25:04

refreshments to be shared in the office so um so it's going to depend the answer to question to is going to depend on

25:11

what the occasion is that you're celebrating um and whether the the lunch is going to take place outside of the

25:17

office or the lunch is going to take place inside the

25:24

office um on the next slide slide 23 um the Third question and we get this one an awful lot which is um are gift cards

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allowed um and I I know that the the concern here is that um under the $10 di

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Minimus rule it says items other than cash so there's always this big question

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mark around is a gift card a gift or is a gift card cash um and OG just recently

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um issued a legal advisory talk about this we addressed it um in the context

26:02

of the $20 Dom Minimus gift exception for gifts from outside sources but we

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also said in that that legal advisory that our analysis of gift cards for purpose for that purpose could also

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extend to the gifts between employees provisions and effectively what we said

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in that La is it depends on what the nature of the card is it depends on what the type of gift card

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is um the because they do come in various guises uh so a general use

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prepaid card um could not be accepted under the $20 di minimist exception

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regardless of its Val or well in our case under the $10 di minimist exemption

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um regardless of their value because and by that we're talking about things that are issued by Major uh sort of credit

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card companies like Visa Mastercard um and things of of of that nature um

26:56

because they are effectively the same as cash they can be used anywhere that will accept effectively accept a credit card

27:04

um so those would not be allowed under the $10 um gift rule be uh because they

27:10

are considered to be cash equivalents um store gift cards could be

27:15

accepted um because they are limited to purchases from a particular

27:21

establishment so a a Store gift card would would not would would would be

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permissible under the $10 Minimus exception likewise a mall gift card we

27:31

have said that's tantamount to a store a specific Store gift card because it it it's you're still limited as to where

27:38

you can purchase um items with that card

27:43

um and then finally we said gifts that are co-branded with uh the logo of a payment

27:49

Network and the logo of a merchant or Affiliated group of merchants are General use prepaid cards and not store

27:54

gift cards and I don't know how often we see those but my understanding is that they might have the store logo on them

28:01

but that they also then have like a Visa Mastercard or something other sort of logo to them and it's an IND an

28:08

indicator that they can be used in other than just the store um where the whose logo is represented on it um next week

28:16

for the advanced practitioner series um they're going to be discussing this uh in a little bit more detail but I just

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wanted to let you all know and particularly for those of you who may not be able to make the the one next week that this same thing these same

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Provisions the same analysis applies to the $10 di Minimus gift uh exception in

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the gifts between employees Provisions um the next question is can

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superiors give subordinates gifts and may subordinates accept them um there is

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nothing in the gifts between employees Provisions that says that a superior may

28:54

not give a gift to a subordinate or that a subordinate may not accept a GI gift from an official

28:59

Superior um so there there's nothing in the gifts rules that would prohibit this

29:05

uh I think the only possible and I don't even know if I I I I'm assuming this is

29:10

theoretically possible um the only thing that that time that might not be true is

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if for whatever reason the subordinate makes more money than the superior um and I guess that could

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happen if you have a gs-15 employee who's supervising another gs-15 employee so that's one of the squirrly things

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about um about that second provision on receiving is um it it it's it doesn't

29:36

talk about Superior subordinate necessarily it talks about whether or not the person who's giving you the gift

29:42

receives less pay than you so generally speaking the answer to the this question

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is yes superiors can give subordinates gifts um and subordinates may accept them um as I said unless there's a

29:55

strange situation where the subordinate actually makes more than the

30:01

superior um the next question this one we get every year um

**White Elephant Gifts**

30:08

which has to do with a white elephant they come in they call them by different things but I think everybody understands

30:13

what we mean by a white elephant uh gift exchange where everybody brings in a wrapped gift and then you sort of pick

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numbers and you randomly are allowed to choose a gift and then it's bit little game that I think a lot of folks play at

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holiday parties um and so the question then becomes um is there any restriction

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on all employees being able to participate in a white elephant gift exchange um and the the answer to that

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question is there is a way that all employees can engage in that kind of a gift exchange

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and it's basically to make sure that all of the gifts that are contributed are worth no more than

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$10 um because it's a traditional occasion if we're going to have superiors and sub participating in it or

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people making more money and less money participating in it um not withstanding that it's

31:05

synonymous um I think just out of an abundance of caution it is and I think just to make sure that it's fully within

31:11

the four corners of the gift between employees restrictions we've we've uh

31:16

We've advised folks that um all employees should be instructed to purchase a a a a gift um that would be

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worth no more than $10 in value um and then you're then you're

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safe so food and refreshments in the office this is one of the other exceptions to the the under the

**Food and Refreshments**

31:38

occasional giftgiving exceptions um and the question there was can all employees

31:44

share in the food at an office potluck and the answer to that again is yes

31:51

um even if not everybody contributes um all employees are allowed to share in

31:57

the food that is offered at an office potluck and again I I want to remind you that that that can be a potluck where

32:05

everybody brings in food um it can also be if a portion of the potluck is that

32:10

donations were made to purchase um to purchase other food um and you know from

32:18

from some sort of establishment or to have the the event catered um in all of

32:23

those instances where it's food and refreshments that are being shared all employees are allowed to to to share in

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that without it being considered a prohibited gift uh to anyone

32:36

um oh there was a question that did come up with respect to that and um I don't

32:41

know that OG's ever made a formal policy call on it but I think it's kind of a common sensical approach to this which

32:47

is what about plates and forks and spoons and utensils that you know because it would be kind of silly and

32:54

foolish I think to say oh well everybody can share in the in the in the food but everybody's got to bring their own plate

33:00

Spoon and Fork because otherwise they're engaging in you know receiving a gift because somebody contributed that so I

33:07

would argue that in the donations for food and refreshments to be shared in the office that that the any monies that

33:12

were collected for that purpose could also be used toward um toward paper plates and forks and napkins and and and

33:19

Sundries like that cherl we have a question that just came in okay um Can a

33:24

landmark birthday such as the 50th birthday be considered a special and frequent occasion rather than a

33:31

traditional occasional basis that's such a good question and I wish I I wish my an on some level I wish

33:39

my answer to you was going to be different because I do understand the sensibilities about that and I think as a matter of custom we do we do recognize

33:47

certain regularly occurring events at certain Milestones as having

33:52

special status um but this is a question that OG answered uh quite some time ago

33:58

um and that was no that that not withstanding that that you know 50 years

34:05

may seem like a a special Milestone um we don't consider it to be a special and

34:12

frequent occasion um it is just one of of many regularly occurring occasions um

34:20

and and we've been we've been disinclined to because we don't want to have to get into then the idea of well

34:27

when is is a birthday a special and frequent occasion and when is it just Ana you know a regularly occurring

34:34

occasion um so I I'm sorry to say that the the answer to your question is that

34:39

no it it cannot um be considered a special infrequent

34:45

occasion okay so our next set of exceptions and

**Exception**

34:51

we call them an exception but it's it's really and I think it is an exception because it's reaching to when can

34:57

employees solicit and when Can employees donate to um a gift to an official

35:04

Superior and the regulations themselves um address two as I said before two

35:11

circumstances where you may ask for and employees May contribute and that's on

35:16

special and frequent occasions of personal significance and the second is for food

35:23

and refreshments to be shared in the office um by by um a group of

**Common Questions**

35:30

employees so let's talk about a few common questions that we get um involving voluntary

35:37

contributions um the first question is and for folks on the phone I'm at slide 29 I'm sorry um the first question is

35:44

who may solicit and collect monetary contributions and this is really an outstanding question and it's a it's a

35:51

problem it can be sort of a problematic thing because the regulation is really kind of silent on that uh the regulation

36:00

doesn't really say who's appropriate to do so and who isn't um but I think as a

36:06

general proposition I have always uh counseled ethics officials that to the

36:13

greatest extent possible um supervisors never be allowed to solicit monies um

36:21

from employees simply because again of that kind of notion of the inherent coercive

36:27

nature of that kind of a solicitation and the fact that these solicitations and these contributions are meant to be

36:34

voluntary I think it's very hard to ensure that contributions are voluntary

36:40

when subordinates are are having that solicitation come from a superior so I

36:47

think to the greatest extent possible superiors should not be able to make

36:53

those solicitations or collect the monetary contributions that would be

36:58

donated um in in in that kind of a an agency-wide um

37:05

solicitation uh and that's kind of just as a general as a general proposition um I think it's always best

37:12

and I would say even among senior managers if senior managers are doing something among themselves I still think

37:18

it would be most advisable to have an executive assistant or someone like that issue the solicitation and if monies are

37:24

going to be collected uh collect the monies just to avoid any sensibility that there's any sense of of of coercion

37:31

that's involved in in that solicitation or or collection um the next question is what

37:38

amount is nominal and we don't as you've probably

37:45

seen in the regulation we don't offer any kind of a dollar value for you know

37:51

nominal amount um we don't even really particularly Define it um I think what

37:58

we try to do throughout our examples are to show um in various guises what might

38:05

reasonably considered to be a nominal amount I think the difficulty with this particular one is that it really varies

38:13

almost from person to person and it sometimes is going to vary based upon how much money the employee makes um or

38:22

or even just their General disposition I mean just how much you make isn't necessarily always dispositive but you know cuz sometimes even people just have

38:29

just different dispositions about you know their their level of generosity um so it's really hard to

38:35

give give you even a a a a general sort of line to determine what necessarily is

38:43

is uniformly going to be considered nominal um I think that you know that for for

38:51

most people you know um5 105 $20 would be considered to be nominal um but there

38:59

might be some other circumstances where um given the nature of the special and frequent occasion let's say that that

39:06

you had someone in the office who suffered some sort of really tragic events like a a fire in their home or or

39:13

something you know that was that was quite devastating um folks might feel that a nominal amount in that case was

39:20

was larger than you know5 or $10 um so I I I think it's a matter I

39:27

think it's a more a matter of sort of trusting people's sensibilities own sensibilities about what constitutes

39:32

nominal and um and the other limitations on your on agency's ability to or

39:39

employees ability to suggest amounts um the fact that whenever you do ask for

39:44

voluntary contributions um it's supposed to be accompanied by um a statement that

39:51

employees are free to contribute less or nothing at all um so I think all of those sensibilities and those

39:57

articulations of you know you're not required to to contribute and if you do

40:03

it's whatever you feel like contributing then really just kind of puts it back on the employee him or herself to to give

40:09

what they feel is comfortable um and I know that's not a terribly satisfying

40:15

answer but I think OG was wise when we didn't attempt to put a dollar value on what's nominal because I do think it's

40:21

very subjective and I think it very much depends on the people involved and and the and the the event events um

40:28

surrounding the the solicitation um and that sort of leads into the third question which is um Can

40:35

a dollar amount be suggested um in the regulation itself in

40:40

the definition of voluntary contribution um I'd like everybody to

40:46

take a look at that because there two pieces to that that um I'm going to be talking about both pieces here u in in

40:54

succession and it's on it's at 2 35303 f is where we define voluntary

41:06

contribution and we say it means a contribution given freely

41:11

without pressure or coercion a contribution is not voluntary unless it is made in an amount

41:17

determined by the contributing employee now I want you to stop there for a minute because the next part

41:23

that's in there I'm going to come back to with the next set of questions so I'm sort of skip over this middle piece in

41:30

here and I'm going to ask you to look down further in that paragraph to where

41:35

you have the next word the where except appears again it's capitalized okay so

41:41

up to this point we've been saying it's it's a contribution is not voluntary unless it is made in an amount determined by the contributing

41:48

employee now we're down at this next sentence and it says except in the case of contributions for a gift included in

41:54

the cost of a lunch and reception or similar event which is what I'm I'm going to talk about in a minute a statement that an employee may choose to

42:01

contribute less or not at all shall accompany any recommendation of an amount to be contributed for a gift to

42:07

an official Superior so again we say right in the

42:12

rag right in the definition of voluntary contribution that this has really got to be the spirit that surrounds any

42:20

solicitation which is that contributions should be nominal

42:26

they should be given voluntarily the individual employee gets to choose what that nominal amount looks

42:33

like and is comfortable for them and they should always be allowed or they should always be made to understand that

42:40

a solicitation is not a demand and that they are free to give less or to not

42:46

contribute at all and I really think that that sort of inculcating that kind

42:52

of spirit in any solicitation is probably the most important thing that

42:58

can be done to um mitigate any any sense of pressure or coercion or any concerns

43:04

about whether amounts are nominal Etc um that might surround a solicitation and

43:11

and and and contributions to to a

43:16

gift so the third thing the the the last sort of piece I wanted to look at in terms of the exceptions was the special

**Special infrequent occasions exception**

43:23

and frequent occasions exception um and um I said I'm going to come back to that

43:29

voluntary contribution that middle piece of the definition and I am going to do that in in just a second um but I want

43:35

us to take a look at the special and frequent occasions exception itself which is at 2635

43:44

304b give you a minute to get

43:53

there okay if you look at that it says a gift appropriate to the

43:59

occasion may be given to an official Superior accepted from a subordinate or other employee receiving less pay in

44:05

recognition of infrequently occurring occasions of personal significance such as marriage illness or the birth or

44:12

adoption of a child or upon occasions that terminate a subordinate official Superior relationship such as a

44:18

retirement resignation or transfer and there just a couple of things I want to highlight for you there

44:24

that we're I'm going to sort of hone in on a little bit more when we start talking about the questions but I like to just make sure that you're you sort

44:31

of like keep them in your head with respect to the actual language of the exception which is special and frequent

44:39

occasions the gift just has to be appropriate to the occasion so unlike the occasional gift

44:46

exceptions where there were some stipulations about either the value or the type of thing that you could give or

44:54

receive under special and frequent occasions we haven't determined what that gift can look like and even

45:02

necessarily how much that gift can be worth all we say in here is that the gift has to be appropriate to the

45:09

occasion um the other thing I wanted to point out is the the the paragraph one

45:14

there B1 it's talking about infrequently

45:19

occurring occasions of personal significance so whenever you're looking

45:26

at occasions to determine if they meet that qualification you really have to be looking at things that are personal in

45:33

nature in order for you to be able to use B1 um and when we get into the questions

45:40

here I think we're going to flesh that out a little bit more but as you can see from my visuals on the screen there

45:46

retirement and weddings and baby showers those are all the things we commonly think of but you know folks have some

45:51

tragic things happen in their lives too and those can qualify us as special in frequent occasion

45:57

of personal significance as well so let's look at the first question

**How do voluntary contributions work**

46:02

that we have um and this is going to pull us back into our definition of voluntary contribution um it says how do

46:08

voluntary contributions work when there is a luncheon or reception um and I think we've all seen

46:15

these happen in the context particularly of retirements and and things like that

46:20

um and here's where I want to pull you back into the definition of voluntary contribution because I think this pie

46:26

piece causes folks an awful lot of confusion so if we go back to 2635

46:34

303f and it's we get to that contribution is not voluntary unless it is made in an amount determined by the

46:40

contributing employee and then it says except that where an amount for a gift

46:45

is included in the cost for a luncheon reception or similar event an employee

46:51

who freely chooses to pay a proportionate share of the total cost in order to attend will be deemed to have

46:56

made a voluntary contribution okay so let's look at that

47:02

a little bit more closely so whenever you're having a luncheon or a reception or some sort of similar

47:08

event and um there is a cost associated with that so you um you have a perad

47:16

cost so if you're going out for lunch and you're all going to chip in for the person's lunch it's understood in

47:22

advance that the cost per person is going to be not only the lunch that you pay for but a proportionate share of

47:28

your supervisor's the the cost of your supervisor's lunch okay that would be one circumstance um but it also

47:35

contemplates if you're holding like a reception someplace and there's going to be a cost per person involved with that

47:42

um what this is saying is if an employee elects to attend that reception and there's a per person cost

47:50

to attend that reception if you tag on an additional

47:55

amount for a gift that's included in that total cost then

48:01

by agreeing by by agreeing to pay the proportionate cost for the reception the

48:06

employee is is you know sort of having made a voluntary

48:12

contribution so we have two different examples that sort of illustrate what I just talked about the the the the what I

48:20

was trying to give you by way of explanation and the first one is in that example one which is right under the

48:25

definition um and that's where the example one says a supervisory employee of Aid has just

48:33

been reassigned from Washington to to Cabo Afghanistan there's a fa farewell

48:38

party and 12 of her subordinates are taking her out to lunch um I don't know

48:43

whether or not this restaurant even exists any longer but um but anyway um

48:49

it's understood that each will pay for his own meal and that the cost of the supervisor's lunch will be divided equally among the 12 even though the

48:56

amount they contribute is not determined until the supervisor orders lunch the contribution made by those who choose to

49:02

participate in the farewell lunch is voluntary okay so that was along the lines of the first example that I gave

49:08

you um the second example I gave you actually comes under where the

49:14

exception for voluntary contributions resides um which is at

49:20

304c and if you go to 304c the first example says

49:27

to Mark the occasion of his retirement members of the immediate staff of the under Secretary of the army would like to give him a party and provide him with

49:34

a gift certificate they may distribute an announcement of the party and include

49:39

a nominal amount for retirement gift in the fee for the party so again it's

49:44

another one of these situations where where where there's a cost sharing Arrangement you know and there's going

49:49

to be a perp person cost to attend the event you can include in that cost of

49:55

attendance a in this case they said a nominal amount um for an actual gift

50:01

over and above just the gift of the reception um or the

50:06

party um so that's how that now one thing I want to you all to be really

50:12

mindful of and this is something that I think happens inadvertently certainly not by Design um it's one thing to

50:21

solicit contributions toward a gift that's over and above the cost of of

50:27

attendance for fellow federal employees you may not do the same if you

50:34

are extending invitations to non-federal sources um particularly those who happen

50:40

to be prohibited sources um so I would I would I would advise you

50:46

to be to be careful when when these kind of parties are being planned for whomever is going out with a

50:51

solicitation to remind them that you cannot be soliciting gifts from prohibited sources so um to the extent

50:58

that there may be prohibited sources you're being invited to these receptions um make sure that they get carved out of

51:04

any solicitation for now it's okay to ask them to prare to to pay their proportionate cost of the event so if

51:10

there's like a perad cost for the reception then they're just paying the market value of what it costing you to

51:16

to put on the party but what I'm talking about is that that addendum that additional nominal amount for an actual

51:24

gift gift to be given to to the employee um just be careful not to be soliciting

51:30

those from from prohibited sources um okay so I'm on slide 32 the

**Cash as a gift**

51:37

next question is is Cash ever allowed as a gift or must it always be an item that

51:42

has been purchased now we know under the $10 di Minimus gift rule which is under the

51:47

occasional basis Provisions you can't Gifts of cash are not acceptable however

51:54

under the special and frequent occasion exception if you remember I went back and said it's a gift that's appropriate

51:59

to the occasion and there are any number of occasions where a gift of

52:04

cash is or could be appropriate um so there is no restriction on the nature of

52:11

the gift that can be given in a special and frequent occasion again it's simply a matter of whether or not that gift is

52:17

appropriate um now I I'm I know that there's I know I'm I'm pretty sure that

52:24

for folks at D the J I think has some additional um policy prescriptions or or

52:31

regulatory prescriptions with respect to gifts between employees um but for for Rank and file

52:38

government employees who are not subject to any other set of um additional you

52:43

know policies or restrictions um really cash is okay and again there's no stipulation as to what value of the gift

52:51

is necessarily appropriate we just say that the gift has to be appropriate to the occas

**Gifts for promotion**

52:59

um the next question is can employees collect contributions for a gift to a cooworker in recognition of her

53:06

promotion to a higher graded position and this one's a little tricky

53:12

um this one's again I think is going to depend on a couple of different things

53:18

number one what is the position to which the coworker is being promoted is it

53:24

just a higher paid position or is it going to be one that actually makes the

53:30

coworker a superior um to the the their fellow co-workers so now we have a

53:35

superior subordinate relationship um if it's a superior subordinate relationship if an employee

53:42

is promoted into a position that now makes the employee the superior of her

53:47

co-workers then a promotion to that position would not be considered a special infrequent

53:54

occasion and let me explain that to you you how that works in the context of special and frequent occasion exception

53:59

as I told you before in order to use B1 um it has to be an special and

54:06

frequent occasion of personal significance and OG has said that promotions and things like that are

54:13

things not of personal significance but of professional significance and we deal with that whole professional piece in

54:20

this in part two of the special and frequent occasions where we're saying okay so if you've got a professional

54:27

circumstance like promotions and reassignments and retirements um then we're talking about

54:34

it has to terminate the occasion has to terminate a subordinate official Superior relationship in order for you

54:41

to be able to use the special and frequent occasion exception okay so if

54:46

this person is being put into a superior position the promotion does not

54:52

constitute a special infrequent occasion of personal significance and you could not use they could not make

54:59

contributions to a gift to their newly promoted cooworker

55:04

but what about if the person's just being promoted to a higher paid position

55:10

and there is no Superior subordinate relationship well in that event um I

55:17

think we would say because there's no Superior subordinate relationship um

55:23

it's the the employee would um um be able to accept gifts from employees

55:29

making less pay um no wait a minute that the that the we

55:38

would not be concerned about the the uh termination of the superior subordinate

55:44

official relationship because there isn't one um and um the the employees I

55:51

believe would be able to contribute to um the promotion of their coworker um

55:57

because it's it's not something that that um you have to worry about the termination of the superior subordinate

56:04

relationship um in the next

**Natural disasters**

56:10

case this one comes up a lot and I think what what makes this one troubling or what makes this one a little dicey I

56:16

think is uh because we bump up against um the combined Federal campaign

56:24

Provisions um when we start dealing with collections in the context of natural

56:30

disasters and we certainly know that it's been a very active natural disaster season um for um for a lot of the

56:39

country and we know that a lot of folks have co-workers who are in affected areas um and out of compassion we like

56:46

to help out our our federal feds um so in the case of a natural disaster when is it okay to collect voluntary

56:52

contributions for fellow government employees

56:58

um and this is one of those things where it really depends on For

57:04

Whom the donations for whom the solicitations and donations are being are being

57:10

made um if you're if you're soliciting voluntary contributions for gifts that will be

57:18

given directly to employees or to employees families um then you're definitely with

57:26

in the Ambit of the Gus between employees rules um and you really don't have to

57:31

worry about CFC so as long as when your your solicitation or your collection is going

57:36

to be given to government employees individually or to their families you

57:42

are squarely within the gifts between employees rules and you just have to abide by those gifts between employees rules and we have the the special and

57:49

frequent occasion exception which allows for contributions of nominal amounts um

57:54

and and a natural dis F would certainly be a special and frequent occasion where where where you have to

58:01

start being a little bit more mindful of CFC is when there are solicitations for

58:09

contributions that will be made to charitable organizations rather than to directly to government employees

58:16

themselves um and it's in that circumstance where um you have to abide

58:22

by the gft between employees rules because that would be considered an indirect gft gift under the gift between

58:28

employees rules but you would still have to make sure that you weren't bumping up against the CFC fundraising roles now OG

58:35

does not have cognizance over the CFC fundraising rules so I just I raise it to your attention just so that you're

58:41

careful about it if and or when these things occur and that's if you look at at part 950 the definition of of

58:48

fundraising for purposes of CFC is whenever there's any solicitation of funds from federal employees in the

58:56

federal workplace on behalf of charitable organizations that's by definition fundraising under the CFC

59:02

rules now I don't know whether OPM would necessarily opine one way or the other

59:08

as to whether a collection in your office for would or wouldn't implicate

59:15

the CFC fundraising rules um I do know CFC is very the OPM is very sensitive

59:20

when it comes to natural disasters about making certain that if people want to do special solicit

59:27

they have a whole specific set of procedures and um things that they that

59:32

they have agencies go through when agencies want to do special solicitations for natural disasters so I

59:38

would just I would just caution you that if you want to do something like that in response to a natural disaster that it's

59:45

probably best if you limit it to solicitations for gifts to be given directly to employees or their or their

59:50

families um and if you want to do anything other than that then I would definitely clear it with OPM before you

59:56

did something like that Sharon we have a pretty detailed question on this okay um

1:00:02

it is in employee dies and an employee solicits for flowers for the funeral and

1:00:09

or solicits employees for plane ticket for family member to attend

1:00:14

funeral and want to use email does subpart c apply or do we look to 950

1:00:22

subpart G and supplemental rules

1:00:29

um so the question is can you read that to me again Kish just I'm trying that's a that's there's a lot of there are a

1:00:35

lot of facts in there okay sure an employee dies okay and one employee

1:00:40

solicits for flowers for funeral and or to the employee solicits employees for

1:00:46

plane tickets plane ticket for family member to attend the funeral mhm so I'm assuming that the family member the

1:00:53

employees family member passed away mhm they want to send the employee to the funeral right um and they want to use us

1:01:01

email I'm not sure about that does subp part C apply or do we look to 950 subpart G and supplemental

1:01:08

rules um I think I would argue that I think I

1:01:14

think for the at least in the first instance when you're talking about solicitation for flowers or even a solicitation for a monetary contribution

1:01:21

to the family or that would to help defay costs or whatever um I think I

1:01:27

think those sorts of things should fall within the gift between if you're going to do a solicitation of that nature I

1:01:32

think that falls within the gft between employees um I I I don't think I mean I I would

1:01:41

not argue that a deceased employee no longer is an employee and therefore is not subject to that that that whatever

1:01:47

solicitation is done shouldn't be fall within the Ambit of sub party I I think that would be silly but um so my

1:01:53

argument would be and I know that it that that we've that we even at OG have done solicitations for um for

1:02:00

contributions to families in the event of a death of of a cooworker um so I think the solicitation for that kind of

1:02:07

a gift whether it be again for flowers or for defay costs or to to give a

1:02:12

contribution to the family in some way would all fall within the Ambit of the gifts between employees rules um like I

1:02:20

said the only time I think 950 would come into play is if the donation was going to be given to a charitable organization

1:02:26

um and even then I don't know in the case of a death of an employee I really don't know and it would be something that you'd have to you'd have to talk to

1:02:33

OPM about to see if they felt that that kind of a solicitation under those circumstances implicated uh the the CFC

1:02:40

fundraising rules um in terms of being able to use yourgv email I guess is the

1:02:45

question um I don't think that that OG has ever

1:02:50

opined that use of the.gov email is an inappropriate um use of government

1:02:55

resources in the event of the the death of a of a coworker um I know that we use

1:03:01

our.gov email when we have um you know wedding uh parties for people who are

1:03:07

getting married and parties for people who are having so anything that falls within the Ambit of the the special

1:03:12

frequent occasions and things like that um I we would probably treat it I guess if we treat it as a as an unauthorized

1:03:18

use of government equipment it would certainly fall within di Minimus uses of of of government equipment and time um

1:03:25

um so I don't see any reason why employees in an organization would not

1:03:31

be able to do that kind of thing using their their dock of

1:03:37

email just I hope that answers your question if not then let us know on the on the hangout if that did not answer

1:03:43

your question and thank you for that it was a great question um and so the the last sort of

1:03:51

area I wanted to talk about are kind of really sort of your non-traditional gifts or non customary gifts and and

1:03:57

it's just something I think for for everyone to sort of think about um the first question was is a loan to a

1:04:03

superior considered a gift and I think by any definition of gift a loan to a

1:04:09

superior would definitely be considered to be a gift it's something having monetary value and for purposes of

1:04:16

subpart C we rely on the definitions of gifts that are in subpart B and if you

1:04:22

look at the definition of gift in the gifts from outside sources it's it's everything in the kitchen sink for the most part it's anything having monetary

1:04:29

value um and um so I a loan would be considered a

1:04:36

gift to to a superior and would have to fall within um all of the the the

1:04:42

provisions of the gifts between employees and I would argue that it's probably never advisable for an an a

1:04:48

subordinate employee to give a loan to a an official Superior whether it is you know completely with acquiescence or or

1:04:56

you know above board I think it's it's a bad idea to begin with but there's also

1:05:01

there's also the additional sort of 208 considerations I think that you have to

1:05:06

be aware of that once you have 208 and 502 considerations because once you have

1:05:11

a loan between um the superior and the subordinate um there is at least at

1:05:17

least an informal contract or business relationship between them because the presumption is that the loan should be

1:05:22

repaid so at the very least you have a covered relationship but then on top of it you do have some 208 implications

1:05:29

because depending upon the nature of that loan or whatever um you know the superior doing anything that could in

1:05:35

any way result in the promotion of that uh that subordinate you know you just don't want to get into colorable uh you

1:05:43

know 208 interests where the superior the subordinate you know um are are engaging in transactions that wind up

1:05:50

giving them a financial relationship that then makes it difficult if not impossible for the superior to actually

1:05:57

um supervise the subordinate um and you may think that that's a bit of a stretch

1:06:03

um but we do have in our prosecution survey in our um I think it's our 2014

1:06:10

prosecution survey we have a situation where there was now it went the other way it was a manager who gave um money

1:06:18

to a subordinate um and the the superior had taken out an advance on their credit

1:06:24

card to give uh money to a subordinate who was having some legal trouble and then subsequent to that sort of personal

1:06:31

loan or that just gift of cash to the subordinate um the uh that supervisor

1:06:39

then tried to intervene in some disciplinary actions that the agency was planning to take against the subordinate

1:06:45

um and rather significantly so and the uh ultimately the the Department of

1:06:51

Justice um pursued it and they entered a plea agreement where the gentleman in

1:06:59

question plad guilty to a felony violation of 208a and um he was sentenced to pay a

1:07:07

was he only paid it well only he paid a $2,000 fine um but you know clearly that

1:07:13

had real 208 implications when you had money exchanging hands between a superior and a subordinate and like I said that went in the opposite direction

1:07:19

with the manager giving the subordinate but um there are still these kinds of implications that are involved anytime

1:07:25

you have have subar and subordinates um engaging in monetary transactions and

1:07:30

they're just a bad idea period um and then the final question I

1:07:35

have here are May supervisors ask subordinates to run personal errands or perform personal work for

1:07:42

them um I don't know how often this happens but this is this we have contemplated that clearly this is or

1:07:49

could be can be a gift to an official Superior um because

1:07:56

a superior can't ask a subordinate as part of their official duties to perform personal tasks because then that's

1:08:02

basically asking them to um to engage an activity that's not it's a misuse of

1:08:07

that that subordinate's time um and it runs a foul of of the misuse of position

1:08:14

in the standards of conduct um and even on off-duty hours you're also dealing

1:08:19

with a prohibited gift because if you're asking a subordinate employee to perform personal tasks for you

1:08:26

off duty then unless you're remunerating them for them for it unless you're

1:08:31

paying them for their their personal time um the subordinate employee is in fact in effect giving a gift to the

1:08:39

official Superior and we do St state that explicitly in subpart G um when we

1:08:46

talk about um misuse of position and

1:08:51

when we talk about use of official time we talk about use of a subordinates time

1:08:58

and we say an employee shall not encourage director coer or request a subordinate to use official time to

1:09:04

perform activities other than those required in the performance of official duties or authorized in accordance with

1:09:09

law or regulation and then in our example below that we give an example of

1:09:15

um an employee at HUD who asked his secretary to type his personal correspondence during duty hours um and

1:09:24

then um further directing or coercing a subordinate to perform such activities

1:09:30

during non-duty hours constitutes an improper use of public office for private gain and we go on to say where

1:09:36

the arrangement is entirely voluntary and appropriate compensation is paid the secretary May type the correspondence at

1:09:42

home on her own time where the compensation is not adequate however the arrangement would involve a gift to the

1:09:48

Superior in violation of the standards and subpart C of this part so we we we

1:09:53

speak about this explicitly the misuse of position section that anytime you know supervisors are asking their

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subordinates to do personal favors for them and are not remunerating them for

1:10:04

the use of their personal time um they're not only running a foul of the misuse of position Provisions but

1:10:11

they're also potentially running a foul of the gft between employees

1:10:17

provisions and with that that's all I have for us today I don't know if you found the questions to be adequately oh

1:10:25

we've got some questions on the hangout yep we have several questions that come in cool okay the first one is does the

1:10:31

prohibition on gifts to supervisors apply to firstline supervisors only or all persons in the employees chain chain

1:10:38

of command that is an excellent question um and the the simple and the quick answer to that is it's everybody in the

1:10:44

chain of command whatever your stove pipe of chain of command is you're it's not just your immediate supervisor it's

1:10:51

anybody who's the superior of your Superior throughout the entire chain of command and um and we you actually find

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that in the definition of official Superior at 303d um but just so that it's abundantly

1:11:05

clear yes it's everybody who's in the employees chain of command okay great

1:11:11

okay and the next one is does section 209 bar federal employees from accepting

1:11:16

gifts that would otherwise qualify for a gift acception when they are offered by

1:11:21

the donor in recognition of pafic work performed by a federal

1:11:27

employee um I think I'm getting the gist of the question um and this would come

1:11:32

up in the context of you know if let's say someone is giving a gift to another

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federal employee for services performed as a federal employee and I think that we have said

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whether we've put it in writing or not that that any time and and it's

1:11:53

typically going to come up I think in in a context where a superior is giving a subordinate monies in recognition of

1:12:01

performance of Duties and I think that we have said that that is a colorable 209 problem because um and it doesn't

1:12:09

matter how well- intended it was if the monies that you're giving the employee are in recognition of services that

1:12:16

they've provided that money and exchange for their Federal Services is not a gift

1:12:21

it's compensation or could be deemed to be compensation and it's you know it's it may run a foul

1:12:29

of 209 because for those of you as all of you should be aware 209 basically is

1:12:34

a supplementation of salary prohibition which says in effect that no one but the United States government should be

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paying government employees for the performance of government duties and if

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an employee in their personal capacity is contributing to the compensation of

1:12:50

another federal employee for the performance of their services I OG has

1:12:56

said that that's a colorable 209 problem that's a great

1:13:01

question okay the next one is uh example two in 2 26 35. 204 indicates an

1:13:10

employee may keep a gift valued at less than $20 after giving a speech in His

1:13:16

official capacity wouldn't this gift also be

1:13:23

prohibited um so we're in the gifts from outside sources aha people are doing their Rope

1:13:28

A Dope on me here and pulling me into other Provisions here um so I'm sorry so

1:13:34

it's example two is that what was said yes example two okay so this a Okay so

1:13:40

we've got a a department of mapping agency employee was invited by an association of cartographers to speak

1:13:46

about his agency's r on the evolution of missile technology at the conclusion of his speech the association presents the employee a framed map with a market

1:13:52

value of $18 in a book about the history of C graphy with a market value of 15 the employee May accept the map or the

1:14:00

book but not both since the aggregate value of these two tangible items

1:14:05

exceeds $20 um so I guess the the person is

1:14:11

asking is since this is clearly I think that I think the argument here is that

1:14:17

this is not you know this is not compensation in exchange for services

1:14:23

this is a a a um a gift which is sort of a thank you for having come to visit us

1:14:30

but it's not precisely compensation in exchange for services and and this does get to I mean this does this gets to a

1:14:37

sticky area of law which is you know when is something when is something in

1:14:44

consideration for services such that it should be treated as being tantamount to

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compensation and when is it sort of a gratuitous thing that is not clearly

1:14:56

tied to the performance of services such that it shouldn't be deemed compensation and I think in OG's gift rules what we

1:15:04

have established through some of the exceptions and by for example under the $20 gift rule you're not because we

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don't want to muddy the waters with that sort of thing where anytime you're giving somebody cash I think it becomes

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more difficult to discern when you're actually compensating someone for

1:15:21

services as opposed to providing a gratuiti that is not intended to be

1:15:26

compensatory um but so that is how I would distinguish that question from the

1:15:34

situation where a supervisor is giving cash to an employee that is explicitly for the performance of Duties and it's

1:15:41

in recognition of those explicit duties and because it would be in that

1:15:46

situation it would be cash I think that that that's the type of circumstance where we're talking about bleeding over

1:15:53

into or being much closer to or in fact tripping right into a compensatory 209

1:16:01

concern okay that looks like that's all we have on the hangout do we have anyone on the phone

1:16:07

who has any questions there are no questions on the phone line at this time okay well I want

1:16:16

to thank everyone for joining us this afternoon I hope this was at least in part um satisfying I know there's been a

1:16:22

lot of of people waiting for us to finally do something on lus between employees and hopefully this this fit

1:16:28

the bill and if not please do let me know and I'm sure you will but um but we look forward to to having you with us

1:16:34

all of you uh with us again next week for the advanced practitioner series yes and you will be receiving an evaluation

1:16:41

from me shortly and we appreciate your time thank you thanks very much and have a great

1:16:47

afternoon this concludes today's conference thank you for your attendance you

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