

'Tis the Season: Ethics Guidance to Keep in Mind for the Holidays

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Planning to invite guests to your company's holiday reception? Thinking about sending fruitcakes to your professional contacts? Although it's easy to get caught up in the spirit of giving, it is important to keep ethics in mind during the holidays. This is particularly true if there are any federal, state, or local officials or employees on your holiday party guest list or holiday gift list. Under the federal gift laws and most state and local gift rules, there is no special exception for holiday parties or gifts. Instead, the general gift rules continue to apply throughout the holiday season. And importantly, lobbyists, lobbyist employers, contractors, and regulated businesses are often subject to more stringent gift rules that likewise apply throughout the holidays. Below are several examples of federal and state gift rules that could impact a corporation or trade association's holiday party or gift list.

Congress. If you would like to invite Members of Congress or their staff to a holiday party, the simplest way to avoid any gift issues is to follow the "reception exception." Under this exception, Members and staff may accept food and refreshments (including alcoholic beverages) of "nominal value" offered other than as part of a meal. This effectively means that light appetizers, hors d'oeuvres, and other finger foods that are not luxury food items (e.g., caviar) may be served.

Attendance at a holiday party also may be acceptable under the "widely attended event" exception to the U.S. House of Representatives and U.S. Senate gift rules. This exception may be available if the invitation is from the event sponsor, 25 or more individuals from outside Congress (and apart from the sponsor's personnel) are expected to attend, the event is open to members

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from throughout a given industry or profession or to a range of persons interested in an issue, and the Member or employee's attendance relates to the attendee's official duties. In guidance released shortly before last year's holiday season, the House Committee on Ethics emphasized this last factor and noted that the "widely attended event" exception does not apply to holiday parties that are "purely social in nature" and are not related to one's official duties. All four criteria require close examination and analysis, preferably in consultation with your organization's counsel.

In terms of holiday gifts, a corporation or trade association will likely have to ensure that only "items of nominal value" are given to Members and staff unless another exception to the House and Senate gift rules applies. The definition of an "item of nominal value" varies between the two houses, but adherence to the rule is absolutely necessary for lobbyists and lobbyist employers.

Executive branch. Inviting Executive branch employees may prove to be a bit more challenging for corporations or trade associations deemed to be a "prohibited source" under federal ethics law. Executive branch employees may accept non-monetary gifts, such as food and beverage at a holiday party or another holiday gift, valued at \$20 or less (and subject to a \$50 per year cap) from prohibited sources.

Under certain circumstances, Executive branch employees also may attend a prohibited source's holiday party under the "widely attended gathering" exception. Although the "widely attended gathering" exception requires agency approval, the Office of Government Ethics has advised that attendance at a prohibited source's holiday party would be appropriate under the "widely attended gathering" exception if the expected attendance includes individuals from a variety of types of organizations with a diversity of viewpoints. Despite these exceptions, it's important to remember that Executive branch appointees are prohibited by Executive Order from accepting gifts from lobbyists and lobbyist employers. This would include attending a holiday party hosted by a lobbyist employer.

Don't forget about the states. Of course, states and localities have their own gift rules that may impact how a corporation or trade association structures its holiday party if it plans to invite state or local officials or employees. Like federal law, most states do not have any specific rules related to holiday parties and gifts. Nevertheless, it is quite common for state ethics agencies to issue guidance and reminders around the holidays specifically applying their gift laws to parties and gifts. For example, the ethics agencies in Connecticut, Hawaii, and North Carolina all have issued such guidance. Some jurisdictions, however, have adopted gift rules that specifically apply to the holiday season. The most common form of these rules, such as in the city of Atlanta, permits government employees to accept perishable items, such as gift baskets, that are meant to be shared with other employees.