

Top Ten Ethics Tips for the Holidays

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Are there any federal, state, or local officials or employees on your holiday list? If so, before you get caught up in the spirit of giving, here are ten important tips on federal, state, and local gift rules that could impact a corporation or trade association's holiday gifting or party planning.

1. No holiday specials. Under the federal gift rules 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. (There are some exceptions at the state and local level; see below.)
2. Stricter rules for lobbyists (and some others) still apply. Remember that, throughout the year, lobbyists, lobbyist employers, contractors, and regulated businesses are often subject to more stringent gift rules. These stricter rules still apply during the holidays.
3. Good reception(s) for MOCs. 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 "moderate" appetizers and hors d'oeuvres that are not luxury food items (e.g., caviar) may be served.
4. "Widely-attended event" exception may also apply. Attendance by congressional Members and staff 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:

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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 from throughout a given industry or profession or to a range of persons interested in an issue; and

The Member or congressional staffer's attendance relates to the attendee's official duties. In guidance for the 2016 holiday season, the House Committee on Ethics emphasized that the "widely attended event exception does not apply to holiday parties that are purely social in nature and not related to . . . official duties."

5. Stocking stuffers? "Nominal value" only. In terms of holiday gifts – other than an invitation to a permissible event – a corporation or trade association should ensure that only "items of nominal value" are given to Members and staff, unless another exception to the House and Senate gift rules applies. Other than keeping the aggregate value of such items to any one recipient under \$10, what qualifies as an "item of nominal value" varies slightly between the two houses. But adherence to the rule is absolutely necessary for lobbyists and lobbyist employers.

6. What about the executive branch? Inviting federal 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. Generally, executive branch employees – other than "political appointees" – may accept non-monetary gifts, such as attendance at a holiday party or another holiday gift, fairly valued at \$20 or less (and subject to a \$50 per year cap) from prohibited sources.

7. WAGs for the holidays. Under certain circumstances, Executive branch employees also may attend a prohibited source's holiday party under the "widely attended gathering" exception. But, as the Office of Government Ethics rhymed in its 2016 holiday season "advisory poem," advance clearance is necessary and a merely social event won't pass the test:

In the case of most parties, the rule's not so clear
As the agency must have an interest, I fear.
If worth more than twenty
And it's no friend true,
Then I'd better seek guidance or I could be blue.

8. But no holiday WAGs or parties for political appointees. 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.

9. 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 have issued such guidance in past years, as have some localities, including Los Angeles and Chicago. 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.

10. Have fun, if you can . . . but not too much! And don't hesitate to contact the Election Law and Government Ethics Group at Wiley Rein with any questions.