

BEWARE VENDORS BEARING GIFTS: THE 5 THINGS THAT SHOULD BE IN YOUR GIFTS AND ENTERTAINMENT POLICY

Insights
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It's the holiday season and your company's purchasing manager received a bottle of wine from a longtime vendor. You think, "No problem, it's just a bottle of wine." A week later you learn that it was actually an extremely rare bottle worth over \$1,000. Now you may have a problem. While your policy is not clear on this issue, the gift is the very type that may create the appearance of impropriety, whether a conflict of interest or bribe. How can you prevent this from happening again? By having a Gifts and Entertainment (G&E) Policy. Here is an overview of this corporate necessity – especially this time of year – and the five things that should be addressed in your policy.

Gifts & Entertainment Policies: A Basic Overview

G&E policies can help prevent the situation described above from occurring and can demonstrate your company's commitment to conducting business ethically and with integrity. An effective G&E policy can't address every possible situation, but a well-drafted policy can promote consistency, encourage ethical business relationships, minimize potential concerns, and provide guideposts for your employees – as well as your business partners.

Who Should Be Covered By the Policy?

The policy should apply to all employees – from the newest hire at the very bottom of the corporate ladder all the way up to the CEO. It is not uncommon for upper executives to receive gifts from business partners at any time of year, but especially during the holidays. If top executives are allowed

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to receive gifts and entertainment that exceed the company limits, it can send the message that the ethical standards apply to all employees except the C-Suite executives. This hurts morale and can lead employees to assume that it is acceptable to violate other company standards.

On some occasions, executives or other employees may be invited to official events that may exceed the entertainment limits. This is usually acceptable provided the events are deemed commercially reasonable and the individuals are representing the company. Keep in mind, however, that in some countries such entertainment may violate local anti-bribery laws and could be considered a violation of federal U.S. law. Therefore, it is important to have such events approved in advance by the company's legal or compliance group.

The 5 Things Your G&E Policy Should Address

1. Dollar Limits on Gifts and Entertainment

Gifts are generally deemed to be anything of value and entertainment usually includes events such as dinners, sporting events, and performances. It is not uncommon to see a \$50-\$100 limit on gifts and a \$100-\$200 limit on entertainment. If you conduct business outside the U.S., your policy should also explain that these limits must be adjusted based upon the local cost of living, so it is equivalent to the U.S. limit. Some policies do not provide a dollar limit for entertainment but instead indicate that the entertainment must be consistent with common ethical business practices. Effective policies should also have annual limits to prevent repeated occurrences which fall under the one-time limit. Moreover, gifts of cash or cash equivalents like gift cards (in any amount) should be strictly prohibited.

2. Family members

The policy should state that gifts and entertainment for family members of the business entities have the same limitations and restrictions.

3. Timing of gifts and entertainment

The policy should prohibit the acceptance of gifts or entertainment during specific time periods. For example, employees should not accept gifts or entertainment from

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business partners or potential business partners during the bidding process, contract negotiations, during vendor evaluations, or formal reviews. Employees should be trained to avoid the appearance of impropriety so there is no question that the offer or acceptance of a gift or entertainment is not dependent upon either party doing or promising to do anything in return.

4. Specific situations

Your policy should cover some specific situations that often raise questions.

- **When given to fellow employees:** The policy should also address guidelines for gift giving and entertainment given by fellow company employees. As an initial matter, employees should inquire about and comply with the recipient's company's policies. This could include dollar and timing limits as well as the recipient's customary business practices. Absent specific recipient company guidelines, gifts and entertainment provided by your company employees should align with the expectations you would have for gifts received by your employees.
- **When given to public officials:** Gifts and entertainment provided to public officials are typically highly regulated. The policy should require advanced approval by someone in the legal or compliance department prior to offering gifts or entertainment to public officials. Your company should also carefully record such gifts and ensure compliance with any applicable reporting obligations. Gifts and entertainment should never be offered in exchange for any government action or approvals such as building licenses, favorable tax assessments or any other government action.
- **When given to foreign public officials:** Gifts and entertainment provided to foreign public officials are governed by the Foreign Corrupt Practices Act and can have significant penalties if the law is violated. Prior clearance from your legal or compliance department should be a mandatory provision of your policy. For more details see: [**Deal of a Lifetime – or Jailtime and Fines? 5 Best Practices to Avoid Foreign Corrupt Practices Act Violations.**](#)

5. How to handle questions

The policy should provide contact information and resources for employees should they have any questions about compliance with the G&E policy. The policy should also encourage employees to ask for guidance should they have any questions about the acceptance of gifts and entertainment.

Wrapping Up

Some final points:

- The policy should be included within the compliance and ethics policy or your company's handbook.
- Include an overview of the policy with the orientation program for new hires and any type of onboarding for new non-employee company agents or representatives.
- It's also a good practice to send annual reminders (i.e., during the holidays) to business partners regarding the company's G&E Policy and ask for their cooperation.
- Some companies also use this opportunity to remind their business partners about their commitment to ethics and integrity in all the company's business transactions.

Conclusion

The holidays provide an excellent opportunity to reinforce and enhance your business ethics and compliance policies and programs. If you have questions regarding best practices for addressing compliance issues, please reach out to your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [Corporate Compliance and Governance Practice Group](#). Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information on this and other employment topics directly to your inbox.