

ASK THE CITY ETHICIST

Gifts Between City Coworkers

By
Phil Weitzman



Question: *I am good friends with a coworker at my City agency who is going through a rough time, and I would like to get him a nice gift to cheer him up. However, thanks to the Board's Valuable Gift Rule, I can only get my coworker a gift worth less than \$50, right?*

Answer:

Good for you for knowing the Board's Valuable Gift Rule! If only your question were as easy as that, this column would be very short. But despite its name, the Valuable Gift Rule does not address your situation. In fact, this rule only prohibits City employees from accepting gifts worth \$50 or more from *entities doing or seeking to do business with the City*. Examples of such entities include private firms, not-for-profits or lobbyists. City employees are not 'entities doing or seeking to do business with the City,' hence the \$50 Valuable Gift rule does not apply to your question.

However, there are conflicts of interest concerns if the person you want to give a gift to is your *boss* and not your coworker.

First, it might seem that the Conflicts of Interest Law prohibition against financial relationships between supervisors and subordinates could come into play. However, gifts in themselves do not create the type of 'financial relationship' prohibited by this rule, as opposed to classic examples of financial relationships such as loans, co-ownership of a business, or selling goods or services.

Even so, there is one rule that could come into play *if* your friend is your supervisor, and that is the provision which says that City employees are not allowed to 'use their positions' to benefit themselves, their family members, or their financial associates. Because of all the power supervisors have over subordinates' work, there is significant risk that supervisors could use their positions to pressure subordinates for gifts.

To address this issue, the Board recently published guidance explaining that supervisors should only accept gifts from subordinates on the occasion of special life events, such as a wedding or the birth of a child. Even on those special occasions, the gift from the

subordinate must be appropriate to the event (no diamond jewelry for the boss's baby shower), and it must be clear that the gift was given due to the event and not the supervisor's position (a supervisor who threatens bad evaluations for anyone who brings cheap gifts to his wedding is *not* off the hook).

For more frequent events, like birthdays or holidays, the Board says that "superiors may accept gifts of smaller value, in essence gifts where the 'thought of giving' has greater value than the gift itself." This means the boss can still participate in a Secret Santa gift exchange or accept a birthday cake from the office staff, although the office should probably follow the standard best practice of setting reasonable limits on gift values and capping the allowable donation where a collection is taking place. And, as with any collection, participation should be voluntary, which means bosses should not be organizing collections for their own celebrations, so that no feels pressured to participate.

There's one last issue to discuss: what about gifts *from* the boss? Since subordinates have little if any leverage to pressure their bosses for gifts, the Board has held that gifts from a superior to a subordinate are unlikely to pose a conflicts of interest concern. So, if you are lucky enough to have a boss who wants to take her subordinates out for a group dinner, enjoy the meal! That being said, unusually frequent or extravagant giving on the boss' part could create at least the appearance of impropriety – for instance, by appearing to compromise subordinates' primary loyalty to the City. Supervisors should consult the Board for advice if they have any questions about what level of giving would be appropriate.

So, returning to your original question, if your friend is simply your coworker, the Conflicts of Interest Law poses no restrictions on your gift. If your friend *is* your boss, I doubt 'going through a rough time' would qualify as a life event that could justify a gift of any significant value, so buy a card instead. And if you supervise your friend, the law poses *almost* no restrictions, but be sensitive to any appearance of impropriety that could arise from excessive or unusual giving, and reach out for more advice if you're not sure what is OK.

To get more advice on this or any other Conflicts-of-Interest-related topic, please call the Conflicts of Interest Board at 212-442-1400 and ask for the "attorney of the day." All calls are confidential, and you can also call anonymously.

*Phil Weitzman is Senior Trainer at the New York City
Conflicts of Interest Board.*

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