

# JOURNAL OF DoD RESEARCH & ENGINEERING

Volume 2 | Issue 2 | Special Edition August 2019



**The Free Lunch - When is it  
Acceptable by Federal Employees?**



## Biography

Jeffrey Green was promoted to the position of senior attorney and Deputy Designated Agency Ethics Official at the Department of Defense in November 2000. Prior to that, Jeff was a deputy ethics official for the Department of Veterans Affairs Office of General Counsel, serving in that job for over 8 years. In 1997, he was selected for a 6 month detail to serve in the Office of the Counsel to the President. He has given numerous presentations on the Standards of Ethical Conduct for Employees of the Executive Branch. He has published several articles on ethics that have been approved for use by the Office of Government Ethics in lieu of an "in person" regulatory training requirement. He also has written a law review article on the History of the Federal Conflicts of Interest Law, and on the Emoluments Clause to the Constitution. He has served as a Guest Lecturer at the Georgetown University School of Law. Prior to Government work experience, Jeff worked in private practice where he developed ethics compliance programs for corporations and taught a business ethics course. Jeff graduated with a BA from Northwestern University and with both a JD and MBA from Washington University in St. Louis. He is a member of the bars of Texas, Pennsylvania and the District of Columbia.

## The Free Lunch - When is it Acceptable by Federal Employees?

While there may be such a thing as a "free lunch" in life, the Standards of Conduct for Employees of the Executive Branch (Standards) prescribe limits as to free lunches for Federal employees ("employees").

The Standards prohibit an employee from accepting a gift from a prohibited source or a gift offered because of the employee's position. The Standards define a gift as anything that has value including food. The first question to ask when lunch or any other gift is provided is "who is giving the gift?" If the donor does, or is seeking to do, business with the Department, conducts activities regulated by the Department, seeks official action by the Department or has interests that may be substantially affected by performance of the employee's duties, then the provider is a "prohibited source."

One exception to the prohibition on accepting gifts is available to career employees (that is, those who are not political appointees) when the gift is equal to or less than \$20 (tax and tip, retail value included) and accepting it would not otherwise cause a reasonable person to question the integrity and impartiality of the employee or the agency. In applying this exception, the amounts cannot aggregate during the course of a calendar year to exceed \$50 from the same source.

As an example, many pharmaceutical companies are prohibited sources because they contract with the Department of Defense. Thus, the limit of the value of a lunch given to a career DoD employee (military or civilian) could not exceed \$20 per occasion, or aggregate to over \$50 during the calendar year. Employees must also always consider the appearance of their actions, too. Even where the \$50 aggregate limit would not be exceeded, the Standards state that employees cannot accept gifts from the same or different sources on a basis so frequent that a reasonable person would be led to believe the employee is using his public office for private gain. Thus, if the gift of lunch even from different sources is benefiting the same employee(s) week after week, the receipt of the gift raises the issue of whether the employee is using his public office for private gain. By contrast, if different employees received the gift of a free lunch every week, the potential for actually or appearing to use public office for private gain may be sufficiently mitigated that employees could accept the gift. An employee would be smart to consult with their local ethics counselor before accepting any gift from a prohibited source.

What if a pharmaceutical company donates free lunches every week or every month to a military medical facility (instead of directly to an employee for use in conjunction with a continuing medical education lunch program)? Federal agencies require specific statutory authority to accept gifts. Even if a Department has gift acceptance authority, accepting a gift of lunches from the same company each week would raise serious questions about the impartiality of agency officials and whether employees are using their public office for private gain. This is because other pharmaceutical companies would feel obliged to provide the same in order to compete for business with the agency.

## From the desk of Jeffrey Green, Senior Attorney at the DoD's Office of General Counsel

---

The Standards also prohibit an employee from soliciting any gift, even a gift worth less than \$20, on behalf of the employee personally or the Department. So, a military hospital employee could not solicit a company to provide lunch for a regular medical education meeting.

By rigorously adhering to the Standards of Ethical Conduct, employees help maintain public confidence in the Department. The Standards may allow for a free lunch under some circumstances. DoD leaders have emphasized, though, that the Standards are the bare minimum; DoD employees must always ask if they can accept a gift, but also, whether they should accept the gift. Even where legally permitted to accept a gift, an employee must always consider whether doing so would call into question his or her impartiality or integrity. There are approximately 3,000 designated ethics counselors in the Department of Defense who stand ready to assist employees in navigating these questions.