

Gift Policy of the Employment Relations Tribunal

There is a general prohibition on the acceptance or offer of gifts and hospitality. However, the complete and absolute ban on gifts altogether under any circumstances, even the most innocuous, may be contrary to common sense but there can be serious consequences for the organisation if the management of gifts, benefits and hospitality is not appropriate. Loss of public trust, financial loss and possible legal action may occur subsequently. Therefore, managing such situations is crucial to avoid unprofessional and unethical conduct, or the perception of any behaviour that undermines integrity.

The law generally prohibits anyone from giving, offering or promising a public official either directly or indirectly anything of value with the intent to influence any public official act or omission on the part of that public official. To find the required intent, there must be an expectation of a favourable official act in return for the gift or favour. Hence, the corrupt intent should be determined from the facts and circumstances under which there is a gift or gratification.

A public official holds a position of trust. As such, the public official shall not accept any gratification at all on account of his/her position or function. One should be careful as, in the interpretation of the law, the word gratification includes a gift. In fact, the definition of “gratification” is so wide that everything and anything apart from “lawful remuneration” is subject to prohibition.

Public officials should understand that there are real risks associated with accepting gifts, benefits and hospitality in the course of their work. Such offers may undermine their integrity and influence their behaviour or give the perception that they are being influenced in their decisions. Even gifts of moderate value may create an inappropriate relationship where the employee feels an obligation or loyalty to the giver. Public officials should be alert to the fact that an offer of gift or gratification can cause them to act partially towards the provider, rather than impartially in accordance with public duty.

Key principles

The key principle is that there is a general prohibition on the acceptance or offer of gifts and hospitality by public officials. The acceptance of a gift, benefit or hospitality can create a sense of obligation that may compromise impartial and honest decision making, and may be perceived as a gratification to further personal or business interests. Public Officials must a priori refuse any gift or benefit that can be construed as a gratification.

A public official shall not accept a gift of any value if it constitutes a conflict with the proper discharge of his/her duties, or creates the appearance of conflict. Thus, on account of his/her public function or in relation to the past, present or future performance of his/her public duties, a public official cannot accept (for himself or for anyone else) any gratification at all, of whatever nature, in whatever form and by whatever name it is called.

The acceptance of gifts of money or gift vouchers is strictly prohibited. Likewise, any gifts and benefits (including token value) associated with procurement is strictly prohibited. This also includes lunch offered by a contractor to public officials involved in monitoring of contracts and dinners to “seal the deal” or the signing of a contract.

Token gifts such as pens, stationery and among others which have logos and other branding must also be avoided as this may be seen to be endorsing or promoting the donor's product. One should exercise caution particularly if the donor is regulated by or has official dealings with the government.

Hotel accommodation/air tickets/tours offered by a private company making its publicity or promotion campaign of a product where the public body is invited to be represented by its official/s must not be accepted.

Gifts from prohibited sources

In line with the key principle mentioned earlier, a public official must not solicit or accept a gift because of his/her official position or from a prohibited source. A prohibited source may be defined as an individual or organisation that:

- is or may be regulated by government
- is or may be affected by government programmes or policies
- has, has had or may have official dealings with government
- has an interest that may be substantially affected by the public official's performance.

Exceptions

The basic rule is that a public official is prohibited from accepting a gift given to the latter in relation to the performance of his/her duties. This applies to gifts given either directly or indirectly. In any case, in addition to the intent and purpose of the gift, a public official must always consider whether it is morally, ethically and legally appropriate to accept a gift regardless of its final disposition.

While public officials should stand guided by the key principle highlighted above, there may be exceptions for acceptance of gifts. These include diplomatic missions, workshops, seminars, conferences and other functions which a public official attends in his/her official capacity or when participating in social and cultural events. However, due care must be exercised by the public official before accepting any gift or hospitality. He/she must make sure that the item offered clearly satisfies the "**Zero Influence Test**". Thus, if the gift or hospitality is offered by someone who is likely to have further dealings with the public official in the future, it must be refused and the matter reported to the Supervising Officer. This will avoid the risk, real or perceived, that the public official's judgment and impartiality is influenced by the gift or gratification offered.

In deciding whether the items offered satisfy the "**Zero Influence Test**", public officials should ensure that the following two conditions are met:

- the offer or giving the gift or hospitality has no intent to influence a decision or start a "sweetening process" with the ultimate aim of influencing a decisionmaking process. The gift should be solely offered out of mere appreciation; and

- the gift or hospitality offered should be available to others such as other public officials or members of the public. The more widely it is available to others, the safer it is.

If the above two conditions are not met, the “**Zero Influence Test**” will not be satisfied.

The golden rule of wisdom is: “when in doubt, abstain”. In any event, the public official **must always report to his/her immediate Supervisor or Senior Officers, any offer of gratification whether accepted or not.**

Furthermore, the receiving of gifts in the circumstances described below should always be subject to a written declaration by the public official made to his/her Supervising Officer in a specific register/file kept to that effect.

What may be permissible:

Conferences and other events

The offer and acceptance of gifts during conferences and other official events may be permissible as long as the: (a) participation in the event is considered as a customary and necessary part of the public official’s duties; and (b) gifts offered/received are not meant to have any bearing or influence on the decision- making process regarding any dealing or future dealings with the organisation(s). A public official participating in a conference or other official event, for which he/she has been officially nominated, may accept an offer of free attendance including materials, meals or refreshments paid by the organisation or organising country/institution. It should be clearly understood that they should preserve their impartiality and their participation in the events should not have any bearing on any of their current or potential decisions where the organising institution has an interest.

Gifts are often presented to a public official representing his/her organisation in a public forum. These gifts are often presented in appreciation of the work, assistance or participation of the public official. Refusal to accept gifts in these circumstances may cause embarrassment and when presented by representatives of another country or international agency, may have adverse diplomatic implications. These gifts may, therefore, be accepted subject to appropriate disposal.

Gifts between/to employees

A public official may accept, give, or contribute towards major life events such as birth or adoption of a child, wedding, funeral, retirement of an official superior or subordinate provided this is not likely to have an influence on any of the official duties of the public official.

Gifts from friends and family members

A public official may accept gifts from friends and family members in the normal giftgiving situations (e.g. birthdays, anniversaries). However, if a gift is received outside the normal

gift-giving pattern of one's relationship, one should consider whether external factors such as any associated obligation may be at play before accepting the gift.

Discounts and rebates

A discount or rebate offered to a public official or a group of public officials without regard to the official status and which is provided in the normal course of business and offered to the general public is not considered a gratification.

On the other hand, if a discount or rebate, which is not available to the general public, is offered to the public official on account of his/her position or office and accepted, both the giver and the public official may commit an offence under the Act.

Hotel accommodation

In the context of promotion campaigns, hotels may offer accommodation and services at discounted rates to customers. Such discounts may be accepted by public officials if made available to the general public or bona-fide targeted groups of customers including a group of public officials. However, if offered to a public official only because of the latter's official position or on account of the exercise of his/her function, then it is a gratification and is therefore prohibited.

A fortiori, free accommodation and services can constitute an offence.

The general principle is that any benefit obtained as a result of the performance of official functions must accrue to the organisation and not to the individual.

Disposal of gifts

The general principle is that gifts obtained during the performance of an official duty are the property of the organisation to which the recipient belongs. The recipient, therefore, must, as soon as practicable, at most within 7 working days after receipt, and if the recipient is away from the office after the recipient has resumed duty, report and hand over the gift to the organisation for appropriate disposal. Appropriate records of all gifts together with the names of the donors will be kept.

Such items when retained should be included in the organisation's inventory record.

- The President of the ERT will ensure that compliance with this policy remains a top priority.
- The OME will arrange for proper records such as a Gift Report File and Gift Register to be kept. These will be open to audit.
- This gift policy will be communicated to the public through the website of the ERT.
- Any query or question arising from the gift policy must be addressed to the OME who may in appropriate circumstances seek relevant assistance including that of the Integrity Officer/s and/or the President of the ERT; if need be

[Adapted from the Guidelines on Gifts and Gratifications for Public Officials published by ICAC].