

# Public Service Law Section 15

## Training Module on Gift Restrictions

Purpose of Gift Restrictions:  
**To Eliminate Risks of Improper Influence  
or the Appearance of Improper Influence**



# Companies and the Department Each Have a Role

## Recommended Best Practices

- Companies and the Department must each play a role in ensuring that the gift prohibitions are followed.
- This training module should be used by companies to ensure compliance.
- Company personnel should contact the appropriate Compliance Officer or Ethics Counsel within their company concerning the propriety of offering or giving any item or service of value to a Department employee.
- The Department's Ethics Officer is available to answer any questions and help troubleshoot issues.
- The best protection against risks of abuse is informed judgment.

# Brief Review of the Statutes

- Public Service Law (PSL) Section 15
- Ethics Commission Advisory Opinion No. 08-01

# Public Service Law Section 15

PSL Section 15 prohibits (among other things) a company subject to the Commission's supervision from offering any gifts to a Department employee. Companies subject to the Commission's supervision includes companies that are regulated by the Commission, which are identified on the Department's website; companies that are lightly regulated; companies that are subject to the Commission's safety regulations; and energy service companies. (cont'd)

# Public Service Law Section 15 (cont'd)

And every such corporation and person, and every officer, attorney, agent and employee thereof, is hereby forbidden and prohibited to offer to any commissioner or to any person employed by the department any office, place, appointment or position, or to offer or give to any commissioner, or to any officer employed or appointed to office in the department any free pass or transportation or any reduction in fare to which the public generally are not entitled or free carriage for property or *any present, gift or gratuity of any kind.*



# Meals and Refreshments

# Meals & Refreshments: Company Guidance

- Section 15 prohibits every officer, attorney, agent and employee of any company subject to the supervision of the commission from offering or giving any gift to Department employees. This includes meals and refreshments.
- A company may choose not to provide refreshments.
- If a company chooses to provide refreshments, DPS staff may have any of the food and beverages offered provided that the employee pays the cost. (cont'd)

# Meals & Refreshments: Guidance (cont'd)

## Best Practices With Respect to Meals and Refreshments

- Companies should provide DPS employees advance notice about the availability of meals and refreshments, the specific costs, and the payment methods available.
- In all instances, Companies should provide a mechanism for DPS employees to pay their own costs, in advance or no later than at the event itself.
- Companies should cooperate in the use of the Department's Meal and Refreshment Form, which a company representative signs, to enable the DPS employee to document how and when payment was made.

# Meals and Refreshments: Scenario 1

- Company and DPS Staff meet at the company's offices for a safety meeting. Coffee, tea, bagels, and muffins are available in the morning. The working meeting lasts for 4 hours and sandwiches and soft drinks are ordered in for lunch.
- Under what circumstances could DPS partake in any of the food or beverages that are available?

Section 15 prohibits the company from offering or giving a gift to DPS employees. This includes meals and refreshments. Accordingly, a DPS staff person may only accept the food and beverages if the DPS employee pays the cost.

The company should provide a mechanism for payment for Department employees.

# Meals and Refreshments: Scenario 2

A company periodically holds meetings to provide information to ESCOs that operate within the company's service territory. DPS employees are invited and often attend. The meetings are held at a conference facility in the company's service territory and typically run for several hours. Refreshments are made available (coffee, muffins, soda and water) for all attendees.

- May the company offer refreshments to DPS employees?  
Yes, but the company must provide a means for staff to pay the company for the costs.
- Under what circumstances may DPS staff partake in any of the food or beverages that are available?  
DPS Staff can accept refreshments if they pay the costs. The company should provide a ready method for payment of such costs, so as not to burden DPS staff or company personnel.

# Meals and Refreshments: Scenario 3

At the conclusion of a joint project, a group of company employees and DPS staff share after work a casual Friday night celebratory meal. A non-work related conversation ensues and the attendees discuss how to divide the bill. One option proposed is that the company employees will cover the costs of the food and the DPS staff will cover the cost of the beverages.

- Is this permissible under the gift rules?

No. When meals and refreshments are shared among company employees and DPS staff, each should cover their own costs separately, and should retain receipts. This avoids the risks of improper gifts and avoids the potential for an appearance of improper influence.

# Meals and Refreshments: Scenario 4

A company consultant and a DPS employee go to lunch and the company consultant pays the bill. The DPS employee says, “I will buy the next time.” A month later, the two go to lunch again and the DPS employee treats for lunch.

- Is this permissible under the gift rules?

No. Reciprocity does not cure a previous impermissible gift. For every transaction, the DPS employee and the company representative must pay their own costs, and each should keep receipts to document compliance.

# Contractors: Company Guidance

- If a contractor is an agent of the company, the Section 15 prohibitions apply.
- The company should make training materials available to all agents of the company.
- If a contractor of a company is providing information or training as part of its regular business and not as an agent of the company, then Section 15 would not apply.

# Meals and Refreshments: Scenario 5

A contractor offers a free seminar to train company employees and other contractors on recent changes in safety regulations. DPS inspectors are invited to attend. Refreshments (coffee, muffins, soda and water) are provided by the contractor.

- Is it appropriate to invite DPS employees to attend the seminar?

Yes, they could be invited because it is free to all. But, if the contractor is acting as an agent of the company, then the DPS employees could not accept any refreshments unless they paid their own costs. If, however, the contractor is acting independently (rather than as an agent of the company), then the DPS employees could accept refreshments without having to pay the costs (subject to the prohibition against an appearance of a conflict of interest or undue influence).



# Other Gifts

# Other Gifts: Retirement Events

- Company Employee Retirement Events: Companies may invite DPS employees to attend company employee retirement events. The DPS employees must pay for their own meal and refreshments, and may not contribute to the cost of any retirement gift.
- Department Employee Retirement Events: DPS policy prohibits company employees from attending unless they are a former DPS employee. If the event occurs before the retiring DPS employee leaves the State payroll, the company employee cannot contribute towards a gift.
- If the event is held after the DPS employee actually retires, then the same cost structure will apply to all who attend.

# Other Gifts: Retirement Events

## Scenario 1

- A company is planning a retirement gala for one of its long tenured employees. The employee was involved in many DPS proceedings and knows many DPS employees. The retiring company employee would like to invite several DPS employees to the event. The cost to attend the retirement party includes dinner, open bar and a contribution for a gift.
- May the company extend the invitation to the employee?

Yes, because the DPS employee will be paying to attend.

# Other Gifts: Event Tickets

## Scenario 2

A company has extra tickets to a Yankee game. A company manager happens to be personal friend of a DPS employee. The manager and the DPS employee only interact socially, not professionally. The manager invites his friend to the game, which is taking place outside normal working hours.

- May the company manager offer the tickets to the DPS employee?

No. Public Service Law Section 15 prohibits utilities from offering or giving gifts to DPS employees. This would include company tickets. (cont'd)

# Other Gifts: Event Tickets

## Scenario 2 (cont'd)

- Would it make a difference if the tickets were the company manager's own tickets, rather than the Company's?

In the case of company personnel and Department employees who are friends, the restrictions in Public Service Law §15 apply to the offering or giving of gifts. Company personnel should consult with the company's compliance officer or ethics counsel to determine whether it is permissible to offer gifts to friends who are Department employees. These cases can be fact-sensitive. A gift intended to influence a Department employee in the performance of his or her duties is prohibited, regardless of the existence of a friendship. Department employees are encouraged to consult with the Department's Ethics Officer prior to accepting any gift from company personnel. (cont'd)

# Other Gifts: Event Tickets

## Scenario 2 (cont'd)

- Can an improper “gift” be avoided if the DPS employee pays for the ticket? If yes, what is proper payment amount if the “face value” of the ticket and its “market value” are materially different (e.g., the “Final Four” games)?

An item is not a “gift” if the State employee pays the fair market value. *See Advisory Opinion No. 08-01*.

- If the State employee pays the higher market value, is the company or its employee unjustly enriched? Do such facts convert this to a business transaction?

The DPS employee should pay the fair market value.

## Other Gifts: Scenario 3

- A gas company holds a large event at a major development site in a city where the company is installing new mainline and service line. The stated purpose is to update local, state and federal officials on the company's most recent safety initiatives and energy efficiency efforts. To emphasize the company's safety focus, and comply with on-site safety requirements, the company offers to give each attendee (including DPS employees) an OSHA certified hardhat with the company's logo emblazoned on the front.
- Would the hardhat be a prohibited gift?

Yes. The company should not offer (and the DPS employees should not accept) the hard hat as a gift.  
(cont'd)

## Other Gifts: Scenario 3 (cont'd)

- Could the company loan the hardhat to a DPS employee?  
Generally, if an item is needed for the event, the DPS employees may use the item for the event, but should then return it to the company. If the DPS staff person did not bring their own hardhat, they could use the company hardhat for safety purposes during the event.
- Assume the same scenario, except involving pens bearing the company's logo being handed out so attendees can take notes. Would the pen be a prohibited gift?  
It would be permissible for the DPS employee to use the company pen for the purpose of taking notes during the event. The pen should be returned at the conclusion of the event.

## Other Gifts: Scenario 4

- A company employee is a professor teaching a Government Relations evening course at the local university. As a favor, a DPS employee, who is also a friend, speaks to the class about how and why the State regulates utilities. The professor presents the DPS employee an honorarium from the university for services as a guest lecturer. Is this permissible?

Yes. The university is offering the honorarium, not the company. It would not be a “gift” because it is a form of compensation for services rendered.

- Can the DPS employee accept the honorarium?

Yes. Under 19 NYCRR 930.3, a State employee can accept an honorarium for services rendered from an entity that, among other things, is not regulated by the employee’s agency.

# Other Gifts: Scenario 5

A company company is sponsoring a conference in New York City to discuss recent energy initiatives. It will be open to the members of the industry, advocacy groups and governmental agencies. Meals will be offered to all attendees. The conference fee is \$400.

- May DPS employees attend the conference?

Since the conference is opened to all member of the industry, DPS employees may attend the conference provided they pay their costs.

- May the company extend complimentary attendance to the DPS employee?

No. That would be a, offer of a gift prohibited under Public Service Law Section 15. The exceptions for “widely attended events” under Advisory Opinion No. 08-01 are not applicable here. (cont’d)

## Other Gifts: Scenario 5 (cont'd)

- May the company offer to reimburse the DPS employee's travel costs to attend?

No. The company cannot offer to reimburse the DPS employee's travel costs. That would be a prohibited offer of a "gift" under PSL Section 15. Also, the regulations governing reimbursement for travel expenses related to official duties, 19 NYCRR 930.6, prohibit a State employee from accepting reimbursement from (among others) an entity regulated by the employee's agency.

# Other Gifts Guidance: Training by a Company or Its Agent

- With respect to the offering of the training to DPS employees from a company contractor or agent, there is a continuum of scenarios.
- Offering training that could provide continuing education credits to a DPS employee, credits that the employee would otherwise have to pay for, would seem prohibited.
- On the other hand, in general, it would be permissible for a DPS employee to attend if the training is free and open to other entities, such as company employees and contractors. (cont'd)

## Training by a Company or Its Agent (cont'd)

- If the company contractor/agent offers training to only the company's employees and DPS employees, and the training provided education/information that is job related, it would seem that would be permissible.
- In such instances, however, the best practice would be to consult with the Department's Ethics Officer in advance.



# Travel

# Other Gifts Guidance: Travel

New York State's Lobbying Act, Article 1-A of the Legislative Law, excludes from the definition of a "gift" "provision of local transportation to inspect or tour facilities, operations or property located in New York state, provided, however, that such inspection or tour is related to the individual's official duties or responsibilities and that payment or reimbursement for expenses for lodging or travel expenses to and from the locality where such facilities, operations or property are located shall be considered to be gifts unless otherwise permitted under this subdivision."

# Other Gifts/Travel: Scenario 1

- During a field inspection of a company site by a DPS employee, a company employee wishes to provide the DPS employee local transportation to the site, using a company vehicle. Is this permissible under the gift rules?

No. The DPS employee must provide his or her own transportation to the site. Once at the site, the DPS employee is allowed to inspect or tour that site in a company vehicle with a company employee, as long as conducting such an inspection or tour jointly with DPS is part of the company employee's duties and responsibilities. (cont'd)

## Other Gifts Guidance: Travel (cont'd)

Based on this exclusion, it would not be considered a “gift” to travel in a company’s vehicle to tour several sites at one time, i.e. leaving the company's main office and inspecting two substations in different locations.

- Where mass transit is the only means of transportation and the company has vehicles, can DPS staff provide its own transportation to a central company site (e.g., the company’s main office) and then have the company provide transportation to the sites to be visited?

Yes.

# Other Gifts/Travel: Scenario 1 (cont'd)

- Company-provided travel to the site would not be permissible if it is offered as a matter of convenience to the Department employee.
- On the other hand, it would be permissible to travel in the company's vehicle to tour a site if there were safety issues that would require traveling in the company's vehicle.

## Other Gifts/Travel: Scenario 2

Company and DPS have identified Risk Significant Areas (RSA) for the year. The DPS safety representative wishes to accompany the company safety auditor on an unannounced worksite inspection 75 miles from the company/PSC office to observe company personnel performing certain RSA functions over a four hour period.

- May the company safety auditor and DPS safety representative ride together in a company vehicle? If so, how would the expenses of the trip (mileage, tolls, etc.) be handled? Is the answer different if the location is only 30 miles (or less) from the company/PSC office?  
No. DPS must provide transportation to the site.



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# Exceptions

# Exceptions to Meals and Refreshments

## Emergency Situations

Basic premise: If the employee can safely leave the building or a site for meals, then there is no reason to accept the refreshments.

The offering of food and refreshments to Department employees may not be considered a gift pursuant to Section 15 if all the following conditions are met:

- Both the company and Department were involved in remedying an emergency situation; (cont'd)

# Exceptions to Meals and Refreshments (cont'd)

- There were limited options for staff to obtain meals or refreshments and to do so would be hazardous or would compromise remedying the situation; and
- The company and the Department had a writing that evidenced the understanding that the company's offering of meals/refreshments to Department staff would not be considered a gift under these limited circumstances. (cont'd)

# Exceptions to Meals and Refreshments (cont'd)

## Emergency Situations

- In the case of large scale emergency restoration situations, such as acts of terrorism and natural disasters, company personnel may provide meals and refreshments to Department employees during the period of a declared emergency provided:
  - The company's Compliance Officer or Ethics Counsel and the Department's Ethics Officer confer at the earliest convenience during the emergency restoration to discuss the offering of meals and refreshments during the period of the declared emergency; and
  - a mechanism is provided that will allow for a true-up of the costs of the meals and refreshments provided so that the Department can reimburse the company.
- In the case of emergency investigatory situations, such as gas explosions, company personnel shall not offer and Department employees will not accept complimentary meals or refreshments.

# Gift Exceptions: Emergencies

## Scenario 1

Company employees are on strike and supervisors are assigned to strike duty. DPS dispatches inspectors to the company's HQ to observe strike duty operations. During the strike, the company's HQ cafeteria serves food and refreshments around the clock and without charge to anyone on site.

- Are DPS employees permitted to partake?

If the employee can leave the building for meals, then there is no reason to accept the meals. If it would be a danger to leave the building, then it would be permitted.

# Gift Exceptions: Emergencies

## Scenario 2

There is a hurricane and DPS staff is working at the company's site assisting with restoration of service on a 24/7 basis. The company is offering breakfast foods in the morning and sandwiches during the day to its staff at no charge. There is no electricity in the immediate vicinity, so there are very limited options available for meals.

- Is it improper for the company to offer DPS employees food and beverages under such circumstances?

When there are no viable options, meals and refreshments can reasonably be viewed not as gifts but essential nourishment.

# Gift Exceptions: Emergencies

## Scenario 3

There is a hurricane and mutual assistance crews have mobilized. There is a 6 a.m. report location at which the mutual assistance crews assemble to receive work assignments for the day. Breakfast is catered and box lunches are distributed at the expense of the company and no cash is accepted.

- May a DPS staff member attending on site to observe operations partake in either of the meals?

In an emergency restoration situation, perhaps when there are no viable options, meals and refreshments are not gifts but essential nourishment.

# Gift Exceptions: Emergencies

## Scenario 4

There is a gas explosion in the evening and DPS staff is immediately sent to the site. The company staff and DPS staff work through the night. At 3:00 a.m., the company employees have pizza and soda delivered to the site.

- May the company offer the DPS employee pizza and soda?

In this situation, staff is on site in an investigatory role -while it may be an emergency, the role is to investigate the cause of the emergency.

The better practice is no. Staff has other options available.



# Friends and Family

# Friends & Family Guidance

Although Section 15 prohibits gifts of any kind, there is an exception for “friends and family.”

- The “friends and family” exception is a limited exception that will be strictly considered.
- *See Public Officers Law Section 73(1)(m)* for definition of “relative” for guidance, which states, in part: “any person who is a direct descendent of that individual’s grandparents or the spouse of such descendent.” (cont’d)

# Friends and Family Guidance (cont'd)

- Issue: How to balance the reality that there are personal relationships that may have developed before the individuals were in their respective positions, as well as relationships when individuals worked together for many years in a company or for the Department, and then one person leaves. (cont'd)

# Friends & Family Guidance (cont'd)

Several factors to consider, including:

- History and nature of the relationship: is it a personal relationship or a professional relationship?
- Whether gifts have been exchanged in the past.
- If the gift was purchased as a business expense.
- If the employees were involved in the same case or proceeding.
- Would someone reasonably think that the gift was an attempt to influence.

# Friends & Family: Scenario 1

A DPS employee and a company employee were college classmates and graduated 15 years ago. After graduation, one starts employment at DPS and the other at a company. They interact regularly through their alumni society and have developed a working relationship in which they share career development experiences. They plan to meet for dinner one evening.

- Can the company employee pay for the DPS employee's dinner?

No, since they have a “working relationship.”

# Friends & Family: Scenario 2

A company employee has a close relationship with a DPS employee. They have been friends for years. Their spouses and children socialize. For the employee's birthday, the company employee buys the DPS employee a Yankee ticket.

- Is this permissible?

Yes. If the company employee purchased the ticket with his personal funds. The relationship involves friendship, and is not just working/career based.

- Suppose the company employee sought reimbursement from the company?

Not permissible.

## Friends & Family: Scenario 3

- Suppose a DPS employee and a company employee live in the same neighborhood and there is a custom to have neighborhood cook-outs at each other's homes. Would it be permissible for the company employee to invite the Department employee to the neighborhood event at his or her home?

Yes, because it is a neighborhood event for the benefit of all who live in the neighborhood and is not a gift directed to the Department employee.