

HR QUICK TAKE: GIFTS TO PUBLIC EMPLOYEES

JOELLEN WHITNEY | DAVIS BROWN LAW | 10/07/2020



Q: We are a public entity employer that is considered “essential” during the pandemic. A local bank wanted to give our employees gift cards to recognize their service to our community. Is this a problem because they are public employees?

A: This question is a little more complicated than it first seems. Many people simply assume that a public employee or public entity cannot accept donations or gifts, but the details are important.

If the local bank is considered a “restricted donor,” the public employees cannot accept the gift cards. So we turn to the question of who is a restricted donor - it depends on whether the public

entity currently does business with the donor or seeks to do so in the future.

A restricted donor:

- is, or currently is seeking to be a party to any sale, purchase, lease, or contracts to or from the public entity
- will personally be, or is the agent of a person who will be, directly and substantially affected financially by the performance or non-performance of the employees’ official duty in a way that is greater than any effect on the public generally or another class of persons to which the donor belongs (in other words, you’re looking for a special edge gift or handout)
- is personally, or is the agent of a person who is, the subject of or party to a matter which is pending before the entity and over which the employee has discretionary authority as part of his/her duties
- is a lobbyist or a client of a lobbyist

If the employer is currently doing business with the bank, it is clear the acceptance of the gift cards would be problematic. If not, then it is not the same issue and the employees can potentially keep the gift cards.

Gift the entity, not the employees

Iowa law also allows gift cards to be provided to a public entity instead of directly to employees. The gift cards could be donated to the entity, and the entity could use them for business purposes. For example, if the gift cards are for local businesses then the entity could use the gift cards to purchase items or services, lunch for employees, supplies, or other items.

Tax implications

There may be tax implications to keep in mind - when employers provide gifts to employees those are likely taxable.