

## Note from the Field

### Organization Days Versus “Organization Daze”: Official and Unofficial Unit Activities in USAREUR

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#### Introduction

Nearly daily, we are asked to render an opinion on whether an event is “official” from an ethical standpoint. To reduce personal costs and reward employees, event organizers sometimes proclaim their organization days as “official events.” Theorizing that an organization day is necessary for good office morale, falsely believing their judgment alone will justify the expenditure of U.S. taxpayer dollars, these organizers overlook fiscal, administrative, and personnel law issues in such events that require consistent legal advice to avoid questionable stewardship of government resources.<sup>2</sup> Organization days generally range from on-post, organized team-building events to off-post, tourist-style events. The U.S. Army Europe (USAREUR) Office of the Judge Advocate has observed everything from cruises of the Neckar River to backyard barbecues publicized as official organization day events. Both official and unofficial organization days are permissible, assuming the rules that relate to each are followed.<sup>3</sup> Commanders, and indeed Judge Advocates, may get into trouble if they blur the distinctions and the funds involved, creating instead an “organization daze.” While there is room for judgment in this area, a good rule of thumb is that the more closely organization days resemble unit parties/picnics or other social outings, the less official they are, and the less authority there is for preparing or participating in them during the duty day or for funding them with appropriated funds (APF).<sup>4</sup> This note synthesizes how some common, recurring legal issues and pitfalls have been dealt with in USAREUR to help avoid “organization daze.”

#### Appropriated Fund Support

In addition to Army major command (MACOM)-wide morale, welfare, and recreation (MWR) events,<sup>5</sup> smaller level military organizations typically may conduct official organization days as unit-level activities under Army Regulation (AR) 215-1.<sup>6</sup> As official organization days,<sup>7</sup> these activities may qualify for certain APF support if, for example, they include such measures as: (1) a schedule of activities that maintains mission readiness, improves unit teamwork and creates esprit de corps (e.g., team athletic or competitive events between sections);<sup>8</sup> (2) periodic personnel accountability (e.g., roll calls to

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<sup>1</sup> This note is based in large part on an information paper by Mike Litak. Information Paper, Mike Litak, Military & Civil Law Division, U.S. Army Europe, subject: Organization Days (4 Nov. 2004).

<sup>2</sup> 5 C.F.R. § 2635.705 (2007); see U.S. DEP’T OF DEFENSE, REG. 5500.7-R, THE JOINT ETHICS REGULATION para. 2-301b (Aug. 1993) [hereinafter JER] (“Government resources, including personnel . . . shall be used by DoD employees for official purposes only, except as follows: (1) Agency Designees may permit their DoD employees to make limited personal use of Federal Government resources other than personnel, such as typewriters, calculators, libraries, and other similar resources and facilities” provided the Agency Designee makes specified determinations to include the use will not interfere with official duties nor incur additional costs to the government).

<sup>3</sup> Labor agreement provisions can offer flexibility between official and unofficial organization days. See, e.g., Collective Bargaining Agreement between Defense Commissary Agency, Eastern Region Headquarters and NAGE art. 16 (Dec. 1999) (providing that “On an annual basis the Employer will consider establishing an Organization Day . . . If such an event is held, specific information regarding employee status, participation and duration of the event will be provided to bargaining unit employees and the Union . . . This . . . does not apply to a Christmas party.”).

<sup>4</sup> 31 U.S.C. § 1301(a) (LEXIS 2007) (stating APF must be used for their congressionally authorized and intended purposes). This statute does not require that each expenditure is specified in an appropriations act, but that each is reasonably necessary or material to the accomplishment of a specified or authorized function. *Id.* An unauthorized expenditure can constitute a crime punishable by a fine or imprisonment or both. *Id.* §§ 1341, 1350.

<sup>5</sup> See U.S. DEP’T OF ARMY, REG. 58-1, MANAGEMENT, ACQUISITION, AND USE OF MOTOR VEHICLES para. 5-5b (10 Aug. 2004) [hereinafter AR 58-1]. For example, for MWR events, “MACOM Commanders, or their delegates, have discretion to provide [APF] bus service” under certain parameters. *Id.*

<sup>6</sup> U.S. DEP’T OF ARMY, REG. 215-1, MILITARY MORALE, WELFARE, AND RECREATION PROGRAMS AND NONAPPROPRIATED FUND INSTRUMENTALITIES paras. 8-16(c)2, 8-29 (31 July 2007) [hereinafter AR 215-1].

<sup>7</sup> *Id.* para. 8-29 (defining unit (or company) level activities as “unit activities that maintain mission readiness, improve unit teamwork, and create esprit de corps.”).

<sup>8</sup> *Id.*

ensure safety and attendance);<sup>9</sup> (3) a location on or near post (preferably with the participants reporting to their duty station and proceeding to the activity site together to reduce costs, enhance force protection and ensure the timely start of official events);<sup>10</sup> (4) Soldiers in a “uniform of the day” and civilian employees in appropriate attire;<sup>11</sup> and (5) food purchased by the participants.<sup>12</sup> Note that the use of reasonable, on-hand resources, such as facilities and athletic equipment, will help reduce the APF costs of such events.<sup>13</sup>

This office has generally concluded that hails and farewells, dining ins/outs, military balls, holiday office parties, and social events at private or government quarters are not official organization events or functions.<sup>14</sup> Government resources may be used for official purposes only. Official purposes clearly include ones that are specifically provided for by law or are essential for successful completion of a DOD function, action or operation. The underlying ethics principle is that employees shall protect and conserve federal property and shall not use it for other than authorized activities.<sup>15</sup> Units cannot create an official event by simply inviting or designating a speaker to discuss command issues or by declaring an otherwise unofficial event to be a “training event” or official place of duty.<sup>16</sup> Consequently, units may use very limited government resources for unofficial events.<sup>17</sup> This does not include appropriated funds, non-tactical vehicles (NTVs), or government personnel.<sup>18</sup> Thus, without an ethics counselor’s prior legal review, government resources should not be used in support of the above listed functions.

## Funding of Events

### *Use of APFs*

The use of APFs may be authorized for official organization days that “include unit activities that maintain mission readiness, improve unit teamwork, and create esprit de corps. Esprit de corps may include such activities as welcome home celebrations.”<sup>19</sup>

### *Use of Nonappropriated Funds (NAFs)*

The use of NAFs may also be authorized for official organization days when “such use is not otherwise prohibited and it has been certified in writing that APF support is not available.”<sup>20</sup>

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<sup>9</sup> See generally *id.* Roll calls can keep timekeeping records for the event valid. See U.S. DEP’T OF DEFENSE, REG. 7000.14-R, FINANCIAL MANAGEMENT REGULATION vol. 8, ch. 2 (Apr. 2007) [hereinafter DOD REG. 7000.14-R].

<sup>10</sup> See, e.g., discussion *infra*, *Miscellaneous Issues*.

<sup>11</sup> U.S. DEP’T OF ARMY, REG. 670-1, WEAR AND APPEARANCE OF ARMY UNIFORMS AND INSIGNIA para. 1-10 (3 Feb. 2005).

<sup>12</sup> See, e.g., U.S. DEP’T OF ARMY, REG. 30-22, THE ARMY FOOD PROGRAM para. 3-441 (10 May 2005) (explaining dining facility support of organization day activities). Appropriated funds may not be used to purchase food or refreshments for military or civilian employees who are not in a temporary duty status. Use of Appropriated Funds to Purchase Light Refreshments at Conferences, B-288266, 2003 U.S. Comp. Gen. LEXIS (Jan. 27, 2003) (finding GSA exceeded its authority when it authorized agencies to pay for light refreshments for attendees not in a travel status). Unit funds may not be used to pay for food or refreshments for official organization days. See AR 215-1, *supra* note 6, para. 5-13k. Unit funds, however, may sell food during official organization days as part of an approved fundraiser. U.S. DEP’T OF ARMY, REG. 210-22, PRIVATE ORGANIZATIONS ON DEPARTMENT OF THE ARMY INSTALLATIONS para. 15b (22 Oct. 2001). In addition, units may use funds previously raised by properly constituted informal funds to purchase food or refreshments for official organization days. U.S. DEP’T OF ARMY, REG. 600-20, ARMY COMMAND POLICY para. 4-21 (7 June 2006).

<sup>13</sup> See AR 215-1, *supra* note 6, tbl. D-1. Participants in official mission-sustaining activities normally should not need to rent MWR equipment or grounds since it is MWR’s APF-supported mission to support these activities. *Id.* para. 3-7. This point, however, may be esoteric to cash strapped MWR managers. Nevertheless, “Programs will be delivered in the recreation center, community activity center, and other facilities . . . not limited to . . . special events such as exhibits, lectures, tours . . . [and] organization days. . . .” *Id.* para. 8-16c.

<sup>14</sup> Information Paper, The Judge Advocate, U.S. Army Europe and Seventh Army, Official vs. Unofficial Functions (25 Jan. 2006) (on file with author) [hereinafter Official vs. Unofficial Information Paper]. See generally AR 215-1, *supra* note 6, para. 5-13k; see also AR 58-1, *supra* note 5, para. 2-3 (providing guidance for determining whether certain events have an official purpose, when authorizing non-tactical vehicle (NTV) use).

<sup>15</sup> 5 C.F.R. pt. 2635.704 (2007).

<sup>16</sup> Certain events are clearly unofficial and disingenuous attempts to convert their nature can be a subterfuge of regulatory guidance. Official vs. Unofficial Information Paper, *supra* note 14; see, e.g., AR 58-1, *supra* note 5, para. 2-3.

<sup>17</sup> JER, *supra* note 2, paras. 2-301b, 2-311.

<sup>18</sup> See AR 215-1, *supra* note 6, para. 5-13k; AR 58-1, *supra* note 5, para. 2-3.

<sup>19</sup> AR 215-1, *supra* note 6, para. 8-29.

## Unit Funds

Unit funds were principally designed to offset the costs of social events such as unit parties and picnics.<sup>21</sup> Unit funds may only be used for events held “for the collective benefit of all unit members *for off-duty recreational purposes*. . . . All unit members must have the opportunity to participate in the activity . . . . Activities must relate to the MWR of the unit members. Family members (and guests) may participate at the discretion of the unit members.”<sup>22</sup> Therefore, unit funds may not be used for official organization days, but may be used for unofficial organization days, when APF support is not authorized.

## Army Civilian Employees

Soldier attendance at official and unofficial organization days is largely the difference between being in a duty or pass status.<sup>23</sup> Yet, the Army requires a diverse workforce—especially overseas—whose differing employment conditions and different rules occasionally require different results even in similar situations. Non-Soldier attendance at organization days requires special consideration. Just as with Soldiers, civilian employees may participate in MWR activities,<sup>24</sup> and their duty status during organization days similarly depends on the official nature of the events. The similarity ends with the discretion to grant “passes” (in other words, to not charge the employee leave).<sup>25</sup>

The basic work week for federal employees is forty hours.<sup>26</sup> Army civilian employees must be in some type of duty status during this workweek.<sup>27</sup> Their time and attendance categories include normal duty and other statuses such as temporary duty (TDY), annual leave, sick leave, military leave, family/medical leave, leave without pay (LWOP), excused absence (a.k.a. administrative leave), absence without official leave, and others.<sup>28</sup> Army civilian employees participating in official activities during duty hours naturally require no special status because they are considered to be on duty; however, those participating in unofficial or social activities must be in a proper absence status, other than TDY.<sup>29</sup>

Army civilian employees may be ordered to attend official team-building/training events,<sup>30</sup> but compelled attendance does not necessarily equate to compelled participation in events. For example, civilian participation in physical training depends on mission, medical, and other liability factors and should be left voluntary.<sup>31</sup> Official organization days also require careful planning because they present a potential for workers compensation claims,<sup>32</sup> and because such employee activities may require union coordination.<sup>33</sup> Additionally, to avoid disparate treatment, a unit’s organization day should be open to the entire government work force of an organization, not just a particular group.

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<sup>20</sup> *Id.*

<sup>21</sup> ADMIN. & CIV. LAW DEP’T, THE JUDGE ADVOCATE GENERAL’S LEGAL CENTER & SCHOOL, U.S. ARMY, JA 230, MORALE, WELFARE & RECREATION OPERATIONS 1996-1997, at I-12 (1996).

<sup>22</sup> AR 215-1, *supra* note 6, para. 6-1(c) (emphasis added).

<sup>23</sup> *See generally* U.S. DEP’T OF ARMY, REG. 600-8-10, LEAVES AND PASSES (15 Feb. 2006) [hereinafter AR 600-8-10].

<sup>24</sup> AR 215-1, *supra* note 6, paras. 1-8, 5-13q.

<sup>25</sup> *See, e.g.*, DOD REG. 7000.14-R, *supra* note 9, vol. 8, ch. 2.

<sup>26</sup> 5 U.S.C. § 6101 (LEXIS 2007); 5 C.F.R. pt. 610 (2007).

<sup>27</sup> *See* 5 C.F.R. § 630.101; *see also* DOD REG. 7000.14-R, *supra* note 9, vol. 8, ch. 2, para. 020206A (observing: “Generally, a full-time employee’s basic work requirement is 80 hours in a pay period. . . . Attendance and absence must be recorded consistent with the status in which employed.”). Hence, Army civilians choosing not to participate in official organization day events must either report for work or take appropriate leave.

<sup>28</sup> *See, e.g.*, U.S. DEP’T OF DEFENSE, MANUAL 1400.25-M, CIVILIAN PERSONNEL MANUAL ch. 600 (Dec.1996) [hereinafter DOD MAN. 1400.25-M].

<sup>29</sup> *See generally id.*; 5 U.S.C. § 6101 (LEXIS 2007); 5 C.F.R. pt. 610.

<sup>30</sup> *See, e.g.*, Cecil Green, *His Best Is All Hearts* (July 1993) (on file with author) (describing teambuilding benefits of the former Army HEARTS program which essentially had participants running a team obstacle course, “Like climbing a 30-foot tree cut to look like a telephone pole. Or inching along a steel cable suspended 30 feet above the ground.”). The article, formerly on a U.S. Army Operations Support Command web site, quoted a disabled Red River Army Depot participant in the program as saying: “I’ve got a lot more trust in my co-workers now, and you can see and feel a difference in the shop . . . . We’re concerned about each other and working as a team. . . .” *Id.*

<sup>31</sup> *See, e.g.*, U.S. DEP’T OF ARMY, REG. 600-63, ARMY HEALTH PROMOTION para. 5-2c (7 May 2007) [hereinafter AR 600-63] (encouraging but not requiring participation in Army total fitness programs).

<sup>32</sup> 20 C.F.R. pts. 1-25 (2007).

<sup>33</sup> *See, e.g.*, AR 600-63, *supra* note 31, para. 1-19e.

In contrast to official organization days, there is no authority for Army civilian employees to use official duty time to attend unofficial or social activities. Therefore, Army civilian employees must use annual leave, properly approved and acquired compensatory time, or LWOP to participate in such activities.<sup>34</sup> Generally, legal or regulatory authority is needed for an absence from duty to be excused without charge to leave.<sup>35</sup>

Excused absences may not be appropriate for unofficial unit activities—the use of taxpayer dollars, APF, for unofficial purposes is not condoned by statute or regulation.<sup>36</sup> Comptroller General decisions and Office of Personnel Management (OPM) guidelines<sup>37</sup> limit grants of administrative leave to brief absences for certain situations.<sup>38</sup> Agency regulations and collective bargaining agreements can further restrict the situations for which it is appropriate.<sup>39</sup> For APF employees, “[p]eriods of excused absence are considered part of an employee’s basic workday even though the employee does not perform his or her regular duties. . . . Consequently the authority . . . must be used sparingly.”<sup>40</sup> Thus, their release from normal duties must qualify for excused absence treatment, which generally is limited to reasons consistent with the public interest (e.g., blood donation, funerals, etc.).<sup>41</sup> Similarly, administrative dismissals for groups of employees “should be rare and authorized only when conditions are severe or normal operations would be significantly disrupted . . . [rather than] to create the effect of a holiday (to include activity downdays and training days).”<sup>42</sup> For NAF employees, managers arguably enjoy greater flexibility but they still must apply principles of sound stewardship of resources, and uniform and impartial administration.<sup>43</sup>

Time-off awards (TOA) are not intended to facilitate such off-duty activities.<sup>44</sup> For APF employees, current guidance discourages the use of TOAs for substantial portions of the workforce on a single occasion,<sup>45</sup> and the use of TOAs to this extent has no precedent in Comptroller General/OPM decisions.<sup>46</sup> For NAF employees, TOAs may be used to recognize individuals or groups for performance or suggestions; however, the contribution of each group member must be consistent with the intent of the Army’s awards policies.<sup>47</sup>

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<sup>34</sup> These categories avoid taxpayer compensation for the performance of unofficial duties, and thus are appropriate. *See* discussion *infra*, *Use of APFs*.

<sup>35</sup> *See, e.g., supra* note 27 (quoting DOD Reg. 7000.14-R).

<sup>36</sup> 5 U.S.C. ch. 63; 5 C.F.R. pt. 630 (2007); DOD MAN. 1400.25-M, *supra* note 28, SC 630.7; U.S. DEP’T OF ARMY, REG. 215-3, NONAPPROPRIATED FUNDS PERSONNEL POLICY paras. 5-45 (29 Aug. 2003) [hereinafter AR 215-3].

<sup>37</sup> *See* General Accounting Office Act of 1996, Pub. L. No. 104-316, 110 Stat. 3826 (amending 31 U.S.C. § 3702). The Comptroller General resolved leave appeals and inquiries until the OPM assumed this role in 1996. *See id.*

<sup>38</sup> DOD REG. 7000.14-R, *supra* note 9, vol. 8, ch. 5, para. 051604 (July 2006); *see, e.g.,* Excused Absence for Bar Examination Preparation, B-156287, 1975 U.S. Comp. Gen. LEXIS 2447, \*2-\*3 (Feb. 5, 1975).

<sup>39</sup> DOD MAN. 1400.25-M, *supra* note 28, SC 630.7.4; *see, e.g., supra* note 3 (quoting Collective Bargaining Agreement between the Defense Commissary Agency, Eastern Region Headquarters and the National Association of Government Employees art. 16 (Dec. 1999)).

<sup>40</sup> DOD MAN. 1400.25-M, *supra* note 28, SC 630.7.1.

<sup>41</sup> *See id.* SC 630.7.4.

<sup>42</sup> *Id.* SC 610.3.3.1.

<sup>43</sup> 5 C.F.R. § 2635.705 (2007); *see also* JER, *supra* note 2, para. 2-301b.

<sup>44</sup> DOD MAN. 1400.25-M, *supra* note 28, SC 451.14.1.

<sup>45</sup> Similar to the appropriate use of administrative leave:

Time-off awards shall not be granted to create the effect of a holiday or treated as administrative excusals or leave; i.e. they shall not be granted in conjunction with a military “down” or “training” day or the like, which would grant the entire civilian employee population, or a majority of the civilian population, a time-off award to be used on a specified day.

*Id.*

<sup>46</sup> *See also* U.S. ARMY IN EUROPE, SUPP. 1 TO U.S. DEP’T OF ARMY, REG. 672-20, INCENTIVE AWARDS para. 4-5 (27 May 2005) (“Supervisors will not direct the use of TOAs for any specific time or day, whether for an individual or a group of employees.”).

<sup>47</sup> *See* AR 215-3, *supra* note 36, paras. 5-45b, 9-1a, 9-8d, 9-1d.

### Local National (LN) Employees

In overseas locations such as Europe, LNs may participate in official unit activities; however, unofficial unit activities during duty hours may present complications.<sup>48</sup> Employment conditions for LN employees are usually found in Status of Forces Agreements, treaties, other agreements, or contracts with local unions.<sup>49</sup> Thus, one should consult those documents and any corresponding local regulations for applicable provisions in a particular country.<sup>50</sup>

In USAREUR, for example, German LNs enjoy one outing per year under their labor rules.<sup>51</sup> For these LNs, this activity is covered by administrative leave. The specific rules provide the following:

It is customary in GE that once a year, or at longer intervals, an employer and his or her employees, or management and employees of a firm, government agency, or other enterprise, have a joint outing at worktime (Betriebsausflug). These outings normally take the place of company parties . . . .

Activity commanders or chiefs may authorize outings for a period not to exceed 1 workday in a calendar year . . . .

The time of the outing that coincides with regular work hours will be considered administrative leave. Employees who do not join the outing are required to work unless they are on annual leave or other authorized absence.

Outings constitute a welfare and morale program (AR 58-1). Supervisors may furnish bus transportation as authorized in AR 58-1, paragraph 2-5c. Transportation will be furnished only on a cost-reimbursable basis . . . .<sup>52</sup>

Joint LN/US civilian participation in unofficial unit activities during LN duty hours is, of course, possible (assuming U.S. personnel are in appropriate duty status (e.g., pass or leave)).<sup>53</sup> The restrictions above, however, limit administrative absence authority for LN outings since supervisors may not grant LNs official time off for both an LN outing and a comparable unofficial unit activity in the same year.<sup>54</sup>

### Contractor Employees

The Army Materiel Command (AMC) General Counsel has opined, regarding organization days and picnics:

While it is recommended that we do not formally invite support contractor employees, they may attend if they make arrangements with their employer, i.e., they are in some kind of leave or non-pay status. Even under these circumstances we should never create any expectation that contractor employees attend the event.<sup>55</sup>

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<sup>48</sup> U.S. ARMY EUROPE, REG. 690-69, LOCAL NATIONAL EMPLOYMENT POLICY IN THE FEDERAL REPUBLIC OF GERMANY—TARIFF IMPLEMENTATION AND OVERTARIFF CONDITIONS para. 13 (1 Sept. 1994) [hereinafter UR 690-69].

<sup>49</sup> DOD MAN. 1400.25-M, *supra* note 28, SC 1231.3.1, SC 1231.3.2.

<sup>50</sup> See, e.g., Tariff Agreement dated December 16, 1966 for the Employees with the Stationing Forces in the Federal Republic of Germany, *translated in* U.S. ARMY IN EUROPE, PAM. 690-60, TARIFF AGREEMENTS THAT APPLY TO PERSONS EMPLOYED BY THE U.S. FORCES IN GERMANY (ENGLISH TRANSLATION) art. 28, at 27 (13 Oct. 2006) (providing specific excusal grounds).

<sup>51</sup> UR 690-69, *supra* note 48, para. 13.

<sup>52</sup> *Id.* (citing AR 58-1, *supra* note 5) (emphasis added).

<sup>53</sup> See *id.*

<sup>54</sup> See *id.*

<sup>55</sup> Ethics Advisory Op., Organization Days, General Law/Intellectual Property Law Div., Army Materiel Command General Counsel, No. 99-02 (1999) (on file with author).

Thus, units should not invite contractor employees to participate in either official or unofficial unit activities, or imply that such participation is expected, and contractor employees should not be used to set up for, or to conduct fundraising for, such events.<sup>56</sup>

### *Family Members*

Family members often attend official and unofficial unit activities.<sup>57</sup> They generally enjoy access to military facilities, and their participation in MWR programs or at public affairs events (similar to an open house or family day at work) is envisioned by regulation.<sup>58</sup> Adequate medical resources (and liability release forms) should be on-hand for official events.<sup>59</sup>

### *Miscellaneous Issues*

Events may be held at sites other than the permanent duty station, but this raises TDY and NTV issues.<sup>60</sup> Unofficial activities will not qualify for TDY.<sup>61</sup> For DOD civilians, “TDY assignments may be authorized/approved only when necessary in connection with official DOD activities or Government business.”<sup>62</sup> For military personnel, “[e]ach Service shall . . . authorize only travel necessary to accomplish the mission . . . and . . . ensure that only travel essential to the needs of the Government is authorized.”<sup>63</sup> Military and civilian personnel may not use NTVs to travel to unofficial or social events.<sup>64</sup>

The decision to characterize an event as official for TDY purposes involves more than a judgment call. The more an employee’s activities will diverge from mission requirements, the greater the likelihood the activity is not official and, without specific authority, does not qualify for APF support, including the duty time of attendees.<sup>65</sup> For instance, attendance at otherwise unofficial events such as private organization meetings is permissible when such “attendance may be beneficial in the normal performance of official duties but is not required to accomplish the approving authority’s mission.”<sup>66</sup> Nonetheless, such attendance generally is only considered to be quasi-official and qualifies only for permissive TDY at no cost to the government (or excused absence for civilian employees if permitted).<sup>67</sup>

Personnel who volunteer to attend an official organization day, in essence, volunteer for an official duty (i.e. training). Consequently, they remain entitled to reimbursement for certain expenses under federal statute and the Joint Federal Travel Regulation (JFTR). Supervisors authorizing such official duties at locations outside the permanent duty station, and for periods beyond the duty day, can therefore incur costs for personnel travel, NTV support, and per diem to include lodging

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<sup>56</sup> *Id.*

<sup>57</sup> See, e.g., AR 215-1, *supra* note 5, para. 6-1c(3) (permitting discretionary family member participation when unit funds are used).

<sup>58</sup> See generally *id.*; see also U.S. DEP’T. OF ARMY, REG. 360-1, THE ARMY PUBLIC AFFAIRS PROGRAM (15 Sept. 2000) [hereinafter AR 360-1].

<sup>59</sup> See, e.g., AR 215-1, *supra* note 5, para. 5-1a, tbl. D-1 (regarding general availability of APF support including manpower); AR 360-1, *supra* note 58, fig. 10-1 (regarding use of liability waivers).

<sup>60</sup> I JOINT FED. TRAVEL REGS. ch. 4 (1 May 2006), available at [https://secureapp2.hqda.pentagon.mil/perdiem/jftr\(ch1-ch10\).pdf](https://secureapp2.hqda.pentagon.mil/perdiem/jftr(ch1-ch10).pdf) [hereinafter JFTR]; AR 58-1, *supra* note 5, para. 2-3.

<sup>61</sup> JFTR, *supra* note 60, ch. 4.

<sup>62</sup> I JOINT TRAVEL REGS vol. 2, para. C4405. (1 Jan. 2006), available at [https://secureapp2.hqda.pentagon.mil/perdiem/jtr\(ch1-16\).pdf](https://secureapp2.hqda.pentagon.mil/perdiem/jtr(ch1-16).pdf).

<sup>63</sup> JFTR, *supra* note 60, para. U2000.

<sup>64</sup> AR 58-1, *supra* note 5, para. 2-3. Employees, generally, are entitled to compensation for official travel. 5 U.S.C. ch. 57 (LEXIS 2007). Thus, ordinarily, they may not be compelled to attend events without reimbursement for travel or admission fees. Unofficial events are, by their nature, not part of official duties. The first element required to be proved in an insubordination charge, for example, is that the employee was given a lawful order. *Phillips v. Gen. Servs. Admin.*, 878 F.2d 370, 373 (Fed. Cir. 1989); *Fleckenstein v. Dep’t of Army*, 63 M.S.P.R. 470 (1994) (finding an agency order to turn over attorney work product was not entitled to be obeyed). See also *Cooke v. USPS*, 67 M.S.P.R. 401 (1995) (clarifying *Fleckenstein* by emphasizing that the avoidance of irreparable harm underpins that earlier decision).

<sup>65</sup> For analogy only, in order to authorize paid TDY at meetings of private organizations, individual attendance was required to be of direct and substantial benefit to the approving authority and to the Department of Defense provided Government funds were available. U.S. DEP’T OF ARMY, REG. 1-211, ATTENDANCE OF MILITARY AND CIVILIAN PERSONNEL AT PRIVATE ORGANIZATION MEETINGS tbl. 1-1, R. 1 (1 Dec. 83) (rescinded).

<sup>66</sup> *Id.* tbl. 1 n.2 (defining a quasi-official meeting). The regulation also considers the cost of regular salary and the loss of time that would have been spent by employees on accomplishing specific program assignments. *Id.* tbl. 1 n.4.

<sup>67</sup> See generally DOD MAN. 1400.25-M, *supra* note 28, SC 610, SC 630; see also Mike Litak, *The Fifty-Nine-Minute Rule: White Christmas, Gray Area?*, ARMY LAW, Mar. 2006, at 1 (expounding in greater detail on administrative leave and excused absence authority).

and meals. These entitlements are not waived simply by having personnel “volunteer” to pay their way. Indeed, having people fund portions of an “official event” would be augmenting congressional appropriations—a violation of federal law.<sup>68</sup>

Many other appropriate tools exist for commanders to lawfully achieve their intended objectives for organization days. Getting to know one’s employees can be accomplished at office calls, counseling sessions, or even voluntary social events. Forming a team or enhancing cohesion may be accomplished through regulation-prescribed events. If managers find such regimented events unappealing, this is an indication that they should be looking at off-duty activities without APF support. A close relative of official organization days, also qualifying for APF support if done correctly, is the staff ride.<sup>69</sup> Staff rides are training events done in a less formal, off-site setting, but typically include an agenda of substantive military educational presentations and activities.<sup>70</sup> But mixing the travel of a staff ride with the leisure of an unofficial organization day and the APF support of unit-level activities is a recipe for disgruntled employee grievances, questionable workers’ compensation claims, and audits of finances and time and attendance records that can affect a military manager’s career, and detrimentally affect participants.<sup>71</sup>

## Conclusion

Although this note addresses just some of the myriad issues related to organization days, it will help offices avoid the most chronic legal issues. Since misuse of resources can result in criminal violations, units should consult servicing legal offices for assistance in resolving organization day issues. Perhaps the best way to ensure your office reviews these issues is to send a proactive note to commanders advising them that it is in everyone’s best interest to ask for permission, rather than forgiveness, in this area.

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<sup>68</sup> 31 U.S.C. § 3302(b) (LEXIS 2007) (requiring federal agencies receiving any money in addition to appropriated funds to deposit them into the general fund of the United States Treasury). “Congressional appropriations ‘establish[] a maximum authorized program level, meaning that an agency cannot, absent statutory authorization, operate beyond the level that can be paid for by its appropriations.’ B-300248, Jan. 15, 2004. Supplementing an appropriation with funds obtained in addition to those provided by Congress would usurp Congress’s fiscal control over agency programs.” Federal Motor Carrier Safety Administration—Retention of Court-Ordered Restitution, Comp. Gen. B-308476, Dec. 20, 2006, available at <http://www.gao.gov/decisions/appro/308476.pdf>.

<sup>69</sup> The staff ride program in USAREUR is managed through a centralized APF contract administered by the U.S. Army Contracting Command, Europe. See U.S. ARMY IN EUROPE, REG. 350-1, TRAINING IN THE ARMY IN EUROPE fig. 2-1 (Feb. 15, 2007) (ascribing staff ride program as a USAREUR function).

<sup>70</sup> See U.S. Army Center of Military History, *Staff Rides*, available at <http://www.army.mil/cmh-pg/StaffRide/index.htm> (last visited Oct. 17, 2007) (listing suggested staff rides); see also U.S. Army Command and General Staff College, *Staff Rides*, available at <http://www.cgsc.army.mil/carl/resources/csi/csi.asp#staff> (last visited Apr. 6, 2007) (“Staff rides and battlefield tours provide important insights into military operations, concepts of leadership, and conditions at the time of battle, as well as vignettes and topics of discussion.”); Memorandum, Commanding General USAREUR and Seventh Army, to subordinate commanders and staff, subject: Army in Europe Command Policy Letter 21, Counseling, Coaching, and Mentoring (18 Apr. 2006) (“Commanders are responsible for preparing our next generation of leaders . . . . Create, plan, and conduct well-organized events such as staff rides, structured off-sites, after-action reviews, and seminars that teach how to lead in combat.”).

<sup>71</sup> The “Stars & Stripes” test may be applied here. If managers (and their legal advisors) are not satisfied that their activity would read well to taxpayers on the front page of the *Stars & Stripes* newspaper, they might wish to reconsider its nature. Participants may face unexpected leave charges on disallowed APF events. See generally AR 600-8-10, *supra* note 23.