

Hello, Everyone!

How often have you been traveling across Fort Belvoir in your government vehicle on your way to a meeting at the Pentagon? So that you can get in the HOV lanes going north, you decide to go across North Post and out Telegraph Gate to the Franconia-Springfield Parkway. You didn't have time to make coffee to bring with you, so you think about pulling into the Dunkin' Donuts at the AAFES Gas Station on North Post for a cup of coffee .

. . but then you remember the rules and complete the drive without the cup of java . . .good call! That cup of coffee could have cost you some serious discipline in the form of a one-month, without pay suspension--really!

An ever present, sometimes confusing, issue that supervisors of civilian personnel face is the use, and often misuse, of government vehicles. Aggravating the issue of misuse of a government vehicle is the sometimes seemingly harsh penalty that could result from that misuse. Although there are many types of employee misconduct, only misuse of a government vehicle carries with it a mandatory penalty that may not be ameliorated by the supervisor. This article will provide information on the definitions of misuse of a government vehicle and the legal consequences of such misuse.

The statutory starting point for this review begins with 31 United States Code § 1344 (§ 1344). Section 1344(a) (1) provides the authority for a federal agency to maintain and use passenger carriers (the statute also covers the use of aircraft, motorcycles, etc.), so long as that use is for "official purposes." The law further provides at 31 United States Code § 1349(b), that if a federal employee willfully violates § 1344(a), that employee shall be suspended without pay for at least one month. The word "willful" has generated a substantial amount of amount of litigation defining its meaning. However, once an employee is found to have willfully violated § 1344, the case law is clear--the employee must be suspended without pay for one month. Federal agencies may also punish employees for misuse of a government vehicle, even if the agency is unable to establish a violation of the statute.

To prove willful unauthorized use of a government vehicle, the agency must show that the employee used the vehicle with knowledge that the use was not for official purposes. The agency does not have to prove that the employee intended to violate the statute--only that the use was for unofficial purposes. The agency may also prove a violation of § 1344 if the employee acts with "reckless disregard" for whether or not the use was for official purposes. Courts established the theory of "reckless disregard" for the unauthorized use of a government vehicle to eliminate an employee's ability to plead ignorance of the rules about use of a government vehicle.

Employees also cannot argue that the use was for altruistic reasons or emergency reasons, such as picking up a sick child from school.

The Merit System Protection Board has also held that an employee may not argue "past practices of an agency" as a defense to the "reckless disregard" standard. That is, if the employee has seen someone else use a government vehicle for unauthorized purposes (driving a government vehicle to lunch, for example), the employee may not use that information as a defense when he uses the government vehicle in a similar, impermissible manner.

You should also be aware that a supervisor allowing or permitting an employee to use a government vehicle in an unauthorized manner subjects the supervisor to the same mandatory one-month suspension without pay as the vehicle user.

There is a very narrow minor personal use or minor deviation exception to the rules outlined above. "Minor personal use" is infrequent, of short duration, and does not interfere with the government mission. "Minor deviation" is similar to "minor personal use," but it usually occurs during long trips in a government vehicle or during Temporary Duty (TDY) travel with the use of a rental car obtained with official government funds. For example, if a law enforcement official was on official travel in a government vehicle, traveling from the Pentagon to Fort Drum, New York, the official may deviate from the most efficient route to obtain food or lodging. However, traveling 10 miles off Interstate 81 to go to a favorite restaurant when other food establishments are available within a mile is not a "minor deviation."

As stated before, the penalty for misuse of a government vehicle is harsh, and the supervisor may not mitigate the mandatory punishment of a one-month suspension without pay. It is important that you and your employees know the rules so that problems (and their severe consequences) can be avoided. If you have any questions, please contact one of our labor counselors.

Have a safe . . . and authorized . . . drive!

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