

CNIC GOLF MANAGERS' TRAINING - 17 AND 18 NOVEMBER 2015

COMMERCIAL ADVERTISING & COMMERCIAL SPONSORSHIP

Ref: (a) DoDI 1015.10 (military MWR program)
(b) CNICINST 1710.3 (Navy MWR program)
(c) OPNAVINST 4000.1F (Gifts)
(d) CNICINST 11000.10 (NFEs on board naval installations)

- Commercial advertising is conducted by contract; and sponsorship is accomplished by agreement.
 - Advertising generates revenue (cash); sponsorship may involve payment of cash and in-kind (product and services).
 - Advertising and sponsorship (solicited and unsolicited) is performed by MWR marketing professionals.
 - Advertising contracts & sponsorship agreements and related marketing material require legal review.
 - Commercial sponsorship is event marketing, not to be confused with gift acceptance. Gift acceptance requires command action—MWR does not have gift acceptance authority.
 - Non-Federal Entities (NFEs) sometimes use Navy facilities for private events for their members/invitees, e.g., local Chambers of Commerce use of MWR facilities for meetings, Navy League's use of golf facilities for private event. Recognition of an NFE's sponsors may not constitute a prohibited performance of sponsorship when:
 - ✓ Intended for the NFE members/guests and not open for "general" attendance by authorized MWR patrons; and
 - ✓ Sponsorship recognition is passive (limited to signage, print or podium recognition only) at the venue and aimed **ONLY** at event attendees.
 - ✓ This shall be accomplished through NAF contracting and the NFE shall be responsible for securing commercial insurance w/Navy and Navy MWR named as additional insureds.
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INCIDENTS GIVING RISE TO CLAIMS (NAF & APF LIABILITY)

Ref: (a) CNICINST 1710.3 (Navy MWR Program), encl (1), para 115 (self-insurance program)
(b) CNICINST 5890.1 (Navy MWR Self-Insurance Program)
(c) JAGINST 5890.1A (Administrative Processing of Claims on Behalf of and Against the United States)

- CNIC maintains a centrally-funded self-insurance program for NAF property and liability coverage associated with MWR operations.

LIABILITY

- Claims for property damage and/or personal injury or death caused by the negligent act or omission of a government employee are administered under the Federal Tort Claims Act (FTCA) - slightly different overseas.
- Any individual expressing an interest to submit a claim against the government (including MWR) shall be referred to the installation's SJA or Regional Legal Service Office (RLSO), who will provide the individual with the required claims packet and administrative assistance on how to proceed--this is not MWR's responsibility.
- An investigation is required for every incident that may result in a claim for or against the U.S. (including MWR). MWR must document all relevant facts surrounding the incident and make every effort to preserve files, documents and other tangible evidence. Destruction or failure to preserve evidence--even when in accordance with routine procedures--undermines the Government's efforts.
- Claimant generally has two years from the date of incident to submit their claim. They are counting on us not to preserve evidence and documents--must protect government's interest.
- See CNICINST 5890.1, chapter 4, for reporting an incident that may result in a claim and for procedures to be followed by the MWR activity concerned.
- If in doubt or if you have claims-related questions, contact your installation/region for assistance.

ERRANT GOLF BALLS (INJURY AND/OR DAMAGE CAUSED FROM)

- Payment is fact specific on these types of claims.

- ✓ If based on poor "design" the claim may be paid with APF through the Judgment Fund.
 - ✓ If based on MWR's poor maintenance of nets/screens or the absence thereof, MWR may be liable and the claim would be paid with NAF.
 - ✓ There are occasions involving the reckless and intentional actions of others (patron liability), which typically isn't paid with APF or NAF. The "Happy Gilmore" situation.
- Like with any claim, MWR needs to collect all the information that needs to be considered by the Tort Claims Unit (TCU) JAGs adjudicating the claim. Contact the region and/or our claims program manager for assistance.

NAF PROPERTY

- Plantings and landscaping. Excluded from insurance coverage, are plantings or landscaping, e.g. trees, plants, shrubs, lawns, and golf courses (including tees, fairways, sand traps, and greens) (see CNICINST 5890.1, encl (1), para 203b).
 - Safety Nets. May or may not be covered - fact specific. If nets may be gathered and protected during inclement weather or off-seasons, do so. When replacing existing safety nets without this feature, this is a feature you will want to consider.
 - Safety related repairs. Generally, this is a government (APF) responsibility.
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MWR NAF EMPLOYEE -VS- NAF CONTRACTOR (GOLF LESSONS)

- Ref: (a) CNICINST 1710.3 (Navy MWR Program Manual)
 (b) CNICINST 5300.2 (Navy NAF Personnel Manual)
 (c) CNICINST 7043.1 (NAF Contracting and Procurement)
 (d) 5 U.S.C. §5533 (Dual Compensation Act)
- Golf professionals may teach at periods when they are receiving regular pay, but when they do, the entire lesson fee goes to the MWR Fund.
 - Golf professionals may be compensated up to 90 percent of a lesson fee for golf lessons given during periods of time for which the professional is off-duty and not receiving regular pay.

- Golf professionals must enter into a concession contract for the provision of off-duty golf lessons using MWR facilities. A copy of the concession contract must be kept on file and all revenue derived from lessons deposited with the MWR Fund.
- Instructors shall document all lessons provided and submit a payment request with copies of the lesson log for payment at the end of the month. There should be no overlap between claimed NAF employment hours and contracted hours.
- NAF employees (golf professionals) performing contracted services as instructors at MWR golf facilities is not a prohibited activity.
- MWR Golf professionals are provided with the flexibility to develop work schedules (and workarounds) that allow MWR golf professionals (as contracted instructors) to provide lessons at times and dates permitted by their supervisors, as determined to be in the best interests of the patron and the NAFI.

SPECIFIC SCENARIO: MWR golf course has NAF employees that are also under a concessionaire contract to provide golf lessons on their off-time. These NAF professionals are providing lessons while they are scheduled to work as NAF employees, but "clock-out" for the time they are providing lessons and then submitting a leave request for the time frame they were giving the lesson - or - they are clocking-out and clocking in at a later time during the same pay period and performing their NAF employment at a later time, as approved by MWR management.

In lieu of the required waiver required by CNICINST 7043.1 (NAF Contracting and Procurement), para 212, a more practical approach has been taken to provide golf professionals with a blanket exception/waiver when the requirements of CNICINST 5300.2 (NAF Personnel Manual) have been met.

If the lessons provider (golf professional--non-amateur) is a NAF employee, per MWR golf program policy, they may teach golf **AND** offer instructions. Within Navy MWR, instruction may be offered through a services contract, and not part of the NAF employee's duties. If the NAF employee and the MWR activity managers follow established guidelines, this is a permitted activity.

An MWR golf professional, as an instructor, is in an "off-duty" capacity and any work being completed is in an instructor (contracted) status. For example, if the instructor was injured while providing instruction, his NAF employee-based workers

compensation insurance wouldn't cover it; if the instructor injured someone or damaged property (or if the individual under instruction did the same), the instructor's comprehensive general liability insurance policy (as required for all contractors) would be responsible. In other words, there wouldn't be an employer-employee relationship in place when the NAF employee is performing tasks associated with the services contract and in most instances, Navy and MWR would not be liable for claims as described above.

Permitting the instructor to take admin or annual leave and providing lessons to MWR patrons at a time most convenient for them appears to best serve the patron and the NAFI. The golf professional should be able to take annual or admin leave covering time missed from work due to providing golf instruction and/or be allowed to work additional hours later in the pay period to cover their 40 hour week when leave is not used, as coordinated with and agreed to by the employee's supervisor.

DUAL COMPENSATION ACT (DCA) CONCERNS. This is in regards to concerns of MWR NAF employees (golf professionals) entering into services contracts to provide golf lessons to MWR patrons at the MWR golf course, and the practice of taking leave w/pay and performing the contracted services, thus, receiving NAF pay from their leave status and earning NAF per the contract during the same period of time.

This has been confirmed with general counsel. The DCA (5 U.S.C. §5533) does not apply in situations involving government employees receiving pay from a single appointment/position and from a fee (different than wages) paid from a services contract, where there is no employer-employee relationship established. The DCA applies to individuals (employees) receiving pay from multiple "positions" and services contractors is not classified or recognized as a "position" as defined in the DCA or other governing regulations.

It is the golf professional's supervisor that would determine if a conflict exists, and if it does, the supervisor has the authority to disapprove the leave request. If the supervisor does not wish to grant leave in order for the NAF employee to teach golf as a contractor, the supervisor simply doesn't approve the leave w/ or w/o pay. This is a matter of management.

SERVICE ANIMALS

MWR doesn't have an independent policy concerning MWR patrons accompanied by service dogs when using MWR facilities. In fact, I was hard pressed to find any written Navy policy, although there is limited DoD policy (2013).

By law, service dogs are covered under Americans with Disabilities Act (ADA), Federal law. This means that they are allowed to go anywhere their handlers goes - airports, restaurants, hospitals, etc. People are not permitted to ask for what the service dog is used. There is an expectation that the service dog behaves as a service dog. If they do not, business owners, etc., are allowed to ask the owner and dog to leave.

Any questions or concerns concerning service dogs should be addressed to the installation/regional chain of command, who, with the assistance of legal counsel, will provide policy.