

# POLITICAL ACTIVITIES AND THE HATCH ACT

Office of Legal Counsel, Office of the Solicitor, United States Department of Labor

The principle behind the rules on political activities is generally the same as with other outside activities: you should not mix your duties to the Government with your personal activities, including partisan political activities.

The rules on partisan political activities are intended to allow you to actively participate in the political process without being subject to coercion by any other federal employee. Most employees may engage in a wide range of **partisan political activities** during off-duty hours, while outside of federal property, and while not using any federally-issued equipment or resources.

This document is intended to serve as guidance. It is not a substitute for formal ethics advice from the Solicitor's Office (SOL). If you have specific questions, you should contact the SOL Ethics Office. Contact information is provided below. Please also note that the Office of the Special Counsel (OSC) is an independent federal agency solely responsible for providing definitive counsel on the Hatch Act and for investigating reports of violations and for prosecuting violators. You may report possible violations of the Hatch Act or seek advisory opinions by contacting the OSC using the contact information provided below.

## What is Partisan Political Activity?

Partisan Political Activity is specifically defined in the Hatch Act to include any activity directed toward the success or failure of:

- a candidate for a partisan political office;
- a political party; or
- a partisan political group.

In addition, the OSC has stated that there are restrictions under the Hatch Act for current and contemporaneous political figures ("CCPFs"), defined as "an individual who received a political party's nomination for President or Vice President in the most recent presidential election". With respect to CCPFs, the prohibition against displaying items on duty or in the workplace includes items that are campaign or election related, even after the election.

A partisan political group is any organization that:

- is affiliated with a political party or candidate for partisan political office, (e.g., the Democratic Congressional Campaign Committee);
- is organized for a partisan purpose (e.g., the National Federation of Republican Women); or
- engages in partisan political activity (e.g., the Sierra Club Political Action Committee (PAC)).

## General Rules for Partisan Political Activity

- An employee may not engage in partisan political activity **while on duty, in a federal workplace, with the use of any federal resource** (such as computers, cell phones, email, etc.), **or while identified as a federal employee** (such as while wearing a DOL lapel pin).
- An employee may **never** knowingly solicit, accept, or receive a political fundraising contribution.
- An employee **may not run** for partisan political office. Each of these bullet points is discussed in more detail below.

NOTE: Career members of the Senior Executive Service (SES), Administrative Law Judges (ALJ), and the Inspector General have significant **limitations** placed on their off-duty political activities, as well as their on-duty conduct.

NOTE: Employees who are appointed by the President with the advice and consent of the Senate (PAS officials) may engage in some on-duty political activities as long as the costs of such activities are not borne by the Government.

## Political Fundraising

As noted above, a federal employee, regardless of position, **may not** solicit, accept, or receive partisan political contributions. For instance, federal employees are prohibited from:

- making telephone calls to solicit campaign contributions (including anonymously servicing a phone bank);
- forwarding, “liking”, or “favoriting” a solicitation for political contributions using social media or email;
- hosting a political fundraiser;
- permitting the use of a Government title in connection with fundraising activities;
- serving on a political fundraising committee;
- personally handing out fliers containing fundraising requests; or
- asking for donations at a fundraising event.

However, all federal employees **may**:

- attend a political fundraiser;
- make a political contribution; and
- RSVP as “attending” or “interested” in a fundraiser on social media.

In addition, most federal employees (with the exception of career SES employees, Administrative Law Judges, and the Inspector General) **may**:

- stuff envelopes with requests for donations;

- solicit or accept political contributions from a fellow union member so long as the donor is not a subordinate; and
- donate one's personal residence for a fundraising event and attend that event, provided that the employee does not serve as the host or on a host committee; does not invite people to attend; and the invitation to the event does not identify the location of the event by using the employee's name (e.g., "at the home of\_\_").

## Running for Office

A federal employee (including PAS officials) **may not**:

- run for a federal office (Congress);
- run for office as a candidate in a partisan election (i.e., an election in which candidates are designated by party affiliation);

NOTE: In the Washington, D.C. area, federal employees may run as "independent" candidates in local partisan elections. An employee may also run for office in a nonpartisan election (i.e., an election in which none of the candidates are designated by party affiliation).

The Hatch Act defines a nonpartisan election as one in which none of the candidates is nominated or elected as representing a political party. Practically speaking, this is determined by looking at the totality of the circumstances of any given election. Usually, a nonpartisan election is designated as such by state or local law, which establishes a presumption that the election is nonpartisan. Evidence showing that partisan politics entered a candidate's campaign, however, may alter this presumption. But no bright-line rule exists that identifies the type or amount of conduct (either by the candidate or party) needed to prove that a nonpartisan election designated by law, in fact, became a partisan one. If a federal individual running for the position, or any of their opponents, participate and win in a party caucus, hold themselves out as having a political party's political support through advertisement (in speeches, flyers, mailings, etc.), seek and advertise the political party's endorsement, or receive political party support in the form of funding, supplies, campaign volunteers, or use of party space, an election that is designated as nonpartisan could be in fact partisan for purposes of the Hatch Act, regardless of the local or state designation. Employees with specific questions should reach out to the SOL Ethics Office or to OSC for guidance.

An employee must resign from their federal position before taking **any** action to run for partisan political office. The Hatch Act has been interpreted to prohibit preliminary activities regarding candidacy, therefore any action that can reasonably be construed as evidence that the individual is seeking support or undertaking an initial "campaign" to secure nomination or election would be viewed as candidacy.

## Use of Government Resources for Political Activities

Government resources **may not** be used for partisan political activities.

Government resources include:

- Government equipment, services, supplies, and mail;
- Government time;
- nonpublic information, including potential donor lists;
- a Government title;
- the authority of an employee's official position.

## Services of Subordinates

Supervisory officials (career and noncareer) **may not** solicit, accept, or receive uncompensated volunteer services from a subordinate for any partisan political purposes. This is true even if the employee's offer is entirely voluntary and self-initiated.

For example, a member of the Secretary's staff may not volunteer directly to the Secretary to write a speech for the Secretary's use at a political event or to accompany the Secretary to the political event to do advance work.

Employees may, however, independently volunteer their services to a party or candidate committee to work at an event outside of duty hours and, in turn, be assigned at the discretion of the party or candidate committee to work with their official supervisor.

## Permissible or Prohibited Political Activities for Most Employees

The following are non-comprehensive lists of permissible and prohibited activities for most federal employees. For specific questions, contact the Counsel for Ethics. See the "Ethics Contacts" section of this document.

### Permissible Activity

- Register and vote in an election.
- Be a candidate for public office in a nonpartisan election.
- Assist in voter registration drives.
- Attend political fundraising events.
- Contribute to a political campaign or party.
- Campaign for or against candidates, referendum questions, constitutional amendments, or local ordinances.
- Sign and circulate nominating petitions.
- Deliver or write campaign speeches for candidates.
- Personally distribute campaign literature (except fundraising literature).
- Hold office in political clubs or political parties.
- Attend or serve as a delegate to a political caucus or convention.
- Stuff envelopes for a political party or candidate.
- Display a partisan political bumper sticker on a personal vehicle (unless the

vehicle is used to conduct official business, such as inspections or other compliance activity).

- “Like,” “friend,” or “follow” a candidate on social media.

## Prohibited Activity

- Use Government resources, **including** supplies, time, title, or personnel for partisan political activity.
- Engage in partisan political activity while on duty.
- Engage in partisan political activity in a Government office.
- Engage in partisan political activity while wearing an official uniform.
- Wear buttons or other merchandise with political/campaign slogans while on duty.
- Personally solicit, accept, or receive political contributions.
- Coerce other Federal employees regarding partisan political activities.
- Knowingly solicit or discourage the partisan political activity of persons with business before their agencies.
- Be candidates for public office in partisan elections.
- Use official authority or influence to interfere with an election.
- Make partisan political remarks in the context of an official speech or other activity.
- “Like” or “favorite” a fundraising post on social media.

## Special Rules for Career Members of the Senior Executive Service, Administrative Law Judges, and the Inspector General

Certain federal employees who are considered “further restricted employees” under the Hatch Act have more limitations placed on their political activities. In the Department of Labor, these employees include:

- career members of the Senior Executive Service (SES),
- individuals employed in the Office of the Inspector General, and
- Administrative Law Judges (ALJ).

In general, these employees are prohibited from engaging in partisan political management or partisan political campaigns; i.e., they may not work on a campaign where any candidate is running as the representative of a political party. In addition to the prohibitions listed above, further restricted employees should not:

- campaign for or against a candidate in a partisan election;
- circulate a nominating petition;
- distribute campaign literature;
- serve as an officer in a political party or as a delegate to a convention;
- speak on behalf of a candidate;
- organize campaign events;

- stuff envelopes for a political party or candidate; or
- make telephone calls on behalf of a political party or campaign.
- However, further restricted employees **may**:
  - vote;
  - assist in nonpartisan voter registration drives;
  - attend political fundraising events, rallies, or meetings;
  - sign nominating positions;
  - or contribute money to political parties or candidates.

## Special Rules for Political Activities of Presidential Appointees

### Special Rules for Presidential Appointees

A Presidential Appointee in a position requiring Senate confirmation (PAS official) must generally abide by the rules covering most federal employees.

However, a PAS official **may** engage in partisan political activities:

- while on duty; and
- while on Government property.

But **may not**:

- use Government funds or other resources for political activities; or
- ask subordinate employees to engage in political activities as part of their Government duties.

### Special Situations for Employees Working with a Presidential Appointee

Although a PAS official may engage in partisan political activities during regular working hours, no similar rule covers other employees, including non-career SES and Schedule C employees. Non-PAS employees must abide by the general rules on political activities outlined above

Therefore, while on duty or while in a Government office, a non-PAS employee **may not**:

- attend a political meeting;
- write a campaign speech;
- perform advance work for a political event; or
- provide advice regarding a political campaign.

However, an employee who works for a PAS official **may** perform regular clerical and administrative tasks in connection with the political activities of the PAS official (such as maintaining the PAS official's schedule), provided that such duties are part of normal Government duties of the employee and they are strictly limited to the logistics of getting the official safely and conveniently to the partisan political event. The employee may not be involved with any aspect of the planning for, or the content of, the partisan political event.

An employee who works for a PAS official generally **may not** accompany the PAS official to a political activity or event held in a Government office or during the employee's duty hours. However, an employee may accompany a PAS official on official travel to a political event if it is deemed necessary for the employee to perform necessary and incidental Department business that may arise during the travel or event. Thus, security personnel and a Government liaison may accompany a PAS official on a political trip. The non-PAS employee on official travel may not participate in, or assist the PAS official with, partisan political activities, even during non-duty hours; the employee must limit activities to supporting the PAS official as an employee of the Department.

## Providing Briefing Materials

A PAS official **may** ask an employee to provide them with publicly available, off-the-shelf materials, even though the senior official may be using them in connection with a political activity or event.

A PAS official **may not** request or require an employee to write or prepare any materials in a federal office and while on duty that will be used solely for political purposes nor may they request the employee prepare materials containing statements of political advocacy.

## De Minimis Resources

Infrequent **de minimis** use of some Government resources, i.e., local faxes and telephone calls, by PAS officials in connection with political activity is allowable under guidance issued by the Office of Special Counsel. **PAS officials are the only persons who may conduct political activity during duty hours and inside of a federal building.**

## Political Travel

The prohibition on the use of Government funds for political purposes also applies to travel expenses of PAS officials and others attending partisan political events.

- For travel to purely political events, the political campaign for which the PAS official is traveling must make all the arrangements and pay all costs.
- For travel that includes both political and Government events, the campaign or political organization **must pay in advance** a *pro rata* share of the costs based on the time spent on political activities.
- For campaign events relating to a Presidential campaign, the campaign must pay the costs which would have been accrued if the trip was solely for the Presidential campaign.
- For both exclusively political travel and mixed political/official travel, certain Department employees may accompany a PAS official on a trip to perform necessary and incidental Department business, as noted above.

Because the formulas for calculating costs associated with mixed trips are complicated and may have implications on federal election laws, employees involved in mixed trips (including those

planning the trips) should consult the Counsel for Ethics well in advance.

## Political Recommendations

Government officials with examining or appointing authority may not solicit, receive, or consider an oral or written recommendation from a Member of Congress regarding an applicant for a competitive service position, unless the recommendation is limited to the character or residence of the applicant or unless it is based on the sender's actual personal knowledge of the applicant's work performance and qualifications.

This same rule applies to recommendations or statements from a Member of Congress regarding personnel actions for current Government employees, including promotions or disciplinary actions.

Employees who receive a recommendation letter from a Member of Congress should contact the Counsel for Ethics for advice on whether the letter may be considered when evaluating an applicant or a current employee regarding a personnel action. This restriction in no way disqualifies or prevents consideration of a particular candidate.

## Consideration of Other Ethics Laws and Regulations

Employees must also be aware of and follow general ethics statutes and the Standards of Conduct while engaging in partisan political activity in addition to the specific rules governing partisan political activities described in this document.

General ethics rules cover:

- outside employment,
- financial conflicts of interest,
- appearances of impropriety,
- gifts,
- lobbying the Government, and
- misuse of Government resources.

For example, although a federal employee generally may serve as an officer of a political campaign while off duty, they may not represent the campaign in a dispute before the Federal Election Commission because such action would be a violation of the basic prohibition on Government employees contacting a federal agency or court on behalf of another person or entity.

Similarly, although an employee may run for office in a local jurisdiction in a nonpartisan election, the employee may not accept the position and retain federal employment if it is inconsistent with the employee's Government duties, such as if the duties include working with the local government.



## Test Your Knowledge: Examples of Permissible and Problematic Activity

Below are some real life situations and explanations to review the rules discussed above.

- After work a GS-9 employee advocates for a candidate running in a partisan election for city mayor to her colleagues while dining at a private restaurant.
  - This is permissible! The employee is off duty, not on government property, and not wearing any insignia that would identify them as a federal employee.
- A Career SES employee is asked to run as Chair of a local partisan political party.
  - This is **not** permissible for the Career SES to proceed with running for this position! Career SES employees are further restricted employees, and are not permitted to engage in this activity.
- A non-career employee wishes to accompany a PAS official to a political rally during duty hours to participate in the rally.
  - This is **not** permissible! Non-career employees, may not engage in partisan political activity while on duty.
- After work, an employee writes a campaign speech on his personal computer.
  - This is permissible! The employee is off duty, and using his personal device.
- An employee places a partisan political bumper sticker on their personal car and drives to work.
  - This is **likely** permissible! The car is their personal property. However, a partisan bumper sticker should not be placed on a federal vehicle or a personal vehicle that is used to engage in federal investigations; enforcement actions; or other federal activities on behalf of the Department. Also, while one bumper sticker is permissible to place on a personal vehicle that is driven to the workplace but not used for any of these purposes, employees should be cautioned that it would be impermissible to place a multitude of bumper stickers on the personal vehicle if a reasonable person could construe it as a campaign vehicle.

## Resources

- 5 U.S.C. §§ 7321-26
- [OSC's Hatch Act Guidance on Social Media](#)
- ["Appropriate Use of IT," DLMS 7, Ch. 900](#)

## Ethics Contacts

### Office of Legal Counsel

The Counsel for Ethics provides advice and guidance concerning the Hatch Act, the statute that governs federal employee participation in political activities. If you have questions about limitations on political activities and other ethics rules, please contact an ethics attorney. Contact information is available on LaborNet.

### Office of the Special Counsel

OSC is an independent federal agency solely responsible for providing definitive counsel on the Hatch Act and for investigating reports of violations and for prosecuting violators. You may report possible violations of the Hatch Act or seek advisory opinions by contacting the OSC at 202-653-7143, or 1-800-854-2824. You may also seek opinions by sending your questions to [hatchact@osc.gov](mailto:hatchact@osc.gov).

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