

ETHICS FLASH — THE HATCH ACT AND YOU

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This Ethics Flash is brought to you by:

5 USC § 7321—7326

5 CFR § 734

DoDD 1442.11

**The General Counsel
serves both the U.S. Air
Force and U.S. Space
Force.*

NAVIGATING POLITICS AS A FEDERAL EMPLOYEE

It's an election year and with campaign rhetoric on the rise, we thought it the perfect opportunity to provide a refresher on the limitations that affect our participation in political activities. The Department of Defense (DoD) has a long standing tradition of remaining apolitical. While we are encouraged to carry out our obligations of citizenship, we must also be mindful of the rules that apply to us as federal executive branch employees.

The political activity of DoD civilian employees is governed by the Hatch Act, its implementing regulations, and DoD policy. Political activity is an activity directed toward the success or failure of a political party, candidate for partisan office, or partisan political group. How these rules apply depends on your position or office. There are further restricted employees and less restricted employees.

It's important to understand which rules apply to you so you remain in compliance with the Hatch Act.

This Ethics Flash will cover how the Hatch Act applies to both types of employees. To make it as simple as possible, we are going to break it down by type of employee. As always, a disclaimer (we lawyers LOVE disclaimers!); the guidance in this Ethics Flash is not a substitute for legal advice. If you need legal advice regarding the Hatch Act (or any ethics issue), please contact us.

NOTE: This Ethics Flash will not cover uniformed personnel. Active duty, reservists, and retirees are governed by DoD Directive 1344.10, *Political Activities by Members of the Armed Services*. Uniformed personnel should contact their local judge advocate for guidance or questions. Last, the Hatch Act is a prohibition on certain political activities. So, this Ethics Flash will

sound negative. We'll try our best to keep it light but we cannot underscore enough the importance of complying with the Hatch Act. Why? The penalties include removal from office, reduction in grade, debarment from federal employment for a period not to exceed five years, suspension, reprimand, or a civil penalty not to exceed \$1,288. Please note, this amount is subject to annual adjustment by the Merit Systems Protection Board.

Before we start, we want to be very clear that this Ethics Flash is an **overview**. If you do not see anything resembling what you may be contemplating, that does not mean the Hatch Act does not apply. Again, reach out to your ethics official for guidance and a legal opinion. This is a long one, folks, so settle in, grab a snack, and let's talk politics!

PROHIBITIONS FOR ALL DOD CIVILIAN EMPLOYEES

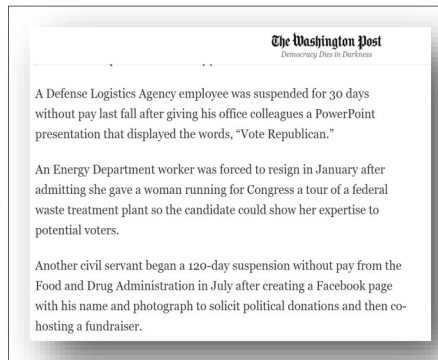
Regardless of whether you are a further restricted or less restricted employee, the following prohibitions apply. You may not: **(1)** use your official authority or influence for the purpose of interfering [with] or affecting election results; **(2)** solicit,

accept, or receive political contributions from anyone; **(3)** run for the nomination or as a candidate for election to a partisan political office; **(4)** participate in political activity while on duty or on federal property; **(5)** engage in political activity while

wearing a uniform or official insignia identifying your office or position as a DoD employee; **(6)** engage in political activity while using a vehicle owned or leased with federal funds; **(7)** knowingly solicit or discourage the
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PROHIBITION FOR ALL DOD CIVILIAN EMPLOYEES

Continued from page 1 political activity of anyone who has business pending before your offices; and **(8)** knowingly solicit or discourage the participation of any political activity of any person who is the subject or participant in an audit, investigation, or enforcement action being carried out by your office.



Hatch Act violations have a wide range of consequences.

Yes, that's a lot. We get it. It sounds like you can do absolutely nothing when it comes to politics. Take heart. If you want to get political, keep reading and we'll tell you how to keep your job and exercise your rights as citizens.

“Political activity is an activity directed toward the success or failure of a political party, candidate for partisan office, or partisan political group.”

FURTHER RESTRICTED EMPLOYEES - **THE DO NOTS**

The DoD divides further restricted employees into two groups. **Group One** consists of Presidential Appointees confirmed by the Senate (PAS) and non-career members of the Senior Executive Services (SES). PAS and non-Career SES are also subject to the restrictions in DoDD 1442.11. **Group Two** consists of Career SES, Contract Appeals Board members, and employees of the National Security Agency, Defense Intelligence Agency, and National Geo-Spatial Intelligence Agency.

In addition to the prohibitions for all DoD civilian employees on page 1, **further**

restricted employees are also expressly prohibited from volunteering to work for the campaign of a candidate running for partisan office. Specifically, further restricted employees are prohibited from working “in concert” with a political party, partisan political group, or candidate for political office. So, no doing research for your buddy running for partisan office. Don't make speeches on their behalf — don't even write their speeches! No fundraising, no hosting of fundraisers, no soliciting for donations or inviting others to fundraising events, and no canvassing.

Further restricted employees also cannot distribute campaign materials or circulate nominating petitions. Nor can you take an active part in partisan political management. For example, you cannot hold office in political clubs or parties, organize or manage political rallies or meetings. Further restricted employees cannot assist in **partisan** voter registration drives and can never invite subordinates to political events or suggest subordinates attend political events. While there are more examples, let's delve into something a bit more positive.

FURTHER RESTRICTED EMPLOYEES - WHAT CAN YOU DO?

Believe it or not, even after all the prohibitions listed above, there **are** things you can do as further restricted employees. Do register and vote as you choose. You can assist in nonpartisan voter registration drives. It's okay to participate in campaigns where none of the candidates represent a political party.

While you can't host a fundraiser, you can absolute-

ly attend one — just be careful you don't actively participate in the fundraising of the event. Also, donate to your candidate of choice — just don't do it while on duty or in a federal building. Interested in attending a rally? Go ahead but like in fundraising, don't actively participate.

You can join political clubs or parties as well as sign nominating petitions. You can also campaign for or

against referendums, constitutional amendments, or municipal ordinances. You can, if you have the time, be a candidate for public office in a nonpartisan election.

Last, further restricted employees can express their opinion about candidates and issues. Just be careful because if the expression is political activity, then the

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FURTHER RESTRICTED EMPLOYEES-WHAT CAN YOU DO

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expression is not permitted while on duty, in any federal room or building, while wearing a uniform or official insignia, or while using any federally owned or leased vehicle—and no using government equipment! You also cannot use your official title or refer to your official position.



There's more! (Please, please, please contact us if you know

this tiny movie reference!) Further restricted employees may work as an election judge or poll watcher for a city or county on Election Day. An election judge is not engaging in political activity but performing administrative tasks like checking in voters, showing them how to use the voting machine, etc.

POLITICAL ACTIVITY AND LESS RESTRICTED EMPLOYEES

Guess what? Prohibitions for less restricted employees were already laid out on page 1. Super easy, right? No, really. Those are it. So let's talk about what less restricted employees can do under the Hatch Act.

As a less restricted employee, you can absolutely register and vote as you choose, assist in voter registration drives, make donations to political campaigns, parties, or groups (but note the prohibition in red on the

right!), and attend political fundraisers. (Again, be careful not to actively fundraise). You can also attend and be active at political rallies and meetings, join and be an active member of political clubs or parties. You can also hold office in political clubs or parties. You can sign and circulate nominating petitions as well as campaign for or against referendum, constitutional amendments, or municipal ordinances.

A less restricted employee can be a candidate for public office in nonpartisan elections (go forth and sit on a schoolboard!), distribute campaign literature in partisan elections, or volunteer to work on a partisan political campaign. And like further restricted employees, you can express your opinion about candidates and issues. Just take note of the precautions above to express those opinions without violating the Hatch Act.

Regardless of whether a further or less restricted employee, you may never solicit, accept, or receive political contributions.

THE HATCH ACT AND SOCIAL MEDIA

Yes, the Hatch Act applies to social media usage. Social media platforms are easily accessible to us at work. After all, our organization uses social media, and most of us can access these platforms on our work computers, phones, and other devices. So, how does the Hatch Act apply to your usage of social media? Pretty much in the same way already discussed.

When using social media, keep in mind three prohibitions applicable to all employees. These are **24/7 prohibitions** (on and off social media). First, you may

never engage in political activity while on duty or in the federal workplace. Posting, liking (including any emoji reaction), sharing or re-tweeting/posting partisan messages is engaging in political activity. This includes following, liking, or friending a candidate. Second, you may **never** knowingly solicit, accept, or receive a political contribution for a political party, candidate in a partisan race, or partisan political group.

Whether you're on duty, not on duty, in the federal workplace, or at home, you may not solicit political con-

tributions or invite people to fundraisers. Full stop. Third, you may not use your official authority or influence to affect the outcome of an election. You can list your official title or position in your social media profile, and even include your political affiliation. You may not post support for partisan political groups, parties, or candidates, while on duty or in the federal workplace.

A quick word on social media aliases — nothing changes. If you can't do it under your real name, you can't do it under an alias.

Don't Make Headlines!



Sheriff who flew Trump flag on patrol boat violated ban on partisan political activity, officials say



Probe finds Trump officials repeatedly violated Hatch Act

For more information on the Hatch Act, visit:

<https://dodsoco.ogc.osd.mil>

or

<https://osc.gov>

For OSC, you may need to access the site via:

<https://safe.menlosecurity.com>

SOCIAL MEDIA & FURTHER RESTRICTED EMPLOYEES

Further restricted employees are extra special. Not only must you comply with the three prohibitions above, but you get one extra which is also a **24/7** prohibition. As previously mentioned, you may not take an active part in partisan political management or campaigning. You cannot share or retweet posts from, or the page of, a political party, candidate in a partisan race, or partisan political group, even if you are not on duty or in the work place. For example, you're at home, scrolling through Facebook on your personal device and discover your favorite candidate in a partisan race has a Face-

'He got it wrong': White House chief of staff admonished after violating Hatch Act with partisan tweet



It says "Tweet" but this applies to "X" too!

book page. You can like it but you cannot share it.

You also cannot link to a campaign or other partisan material of a political party, candidate in a race, or partisan political group, even if you are not on duty or in the work place. So,

don't include links to the website of a candidate in a partisan race in your social media profiles. Again, you can like the page, but you can't share, retweet, or link to it.

None of this prohibits you from expressing personal political opinions. Just don't do it while on duty, in the federal workplace, or use government equipment.

Last, if your official position is associated with an official Department of the Air Force social media account, you may never, ever use that official account to engage in political activity. This goes for less restricted employees, too!

POPULAR FAQs ON THE HATCH ACT

We thought it a great idea to share a few FAQs asked and answered by the Office of Special Counsel (OSC). OSC is an independent federal investigative and prosecutorial agency and the Hatch Act watchdog.

Question 1: Does the Hatch Act apply while teleworking?

Answer: Yes, from whatever location you are teleworking, that is your place of duty for that work day. So, if your working from home, you are on duty and may not engage in political activities in your home while you are on duty. **Question 2: When I'm done teleworking from home, I'm off-duty and not in the federal workplace. So, may I use my government computer or**

cell phone to engage in partisan political activity?

Answer: No. While you are no longer on duty, you may never use Government resources to engage in political activities.

Question 3: May I display a picture of a candidate for partisan political office in my office?

Answer: No. All employees are prohibited from displaying campaign pictures, posters, bumper stickers, screen savers, t-shirts, and other campaign materials of candidates for partisan political office in a Federal building. Exception: A personal picture of you with a candidate. **BUT**, the picture must have been on display prior to the election season, you have to be in the picture,

and it has to be a personal photo. For example, the candidate is your best friend, and the photo is not from a meet-and-greet.

Question 4: May I display a picture of a President who is running for re-election?

Answer: No. When a sitting President is running for re-election, you may not display their photo in the Federal workplace unless one of two exceptions applies. The first exception applies to official photos of the President, such as the traditional portrait photo of the President, or photos of the President conducting official business (not campaign business). The second is the same as in Question 3 (personal friends).

The Air Force Ethics Office directs the daily activities of the Department of the Air Force ethics program. We serve as legal counsel to the Secretariat, Air Staff and Space Staff. While we are happy to assist with any ethics issues, individuals outside of Headquarters should consult with their local ethics counselor.

Should you have any questions, please contact us at SAF.GCA.Ethics.Workflow@us.af.mil.