

Hatch Act FAQs from the Office of Special Counsel (July 2022)

Federal Employees

Activity in the Workplace

Q: May federal employees express their views about current events, policy issues, and matters of public interest at work or on duty?

A: Generally, all federal employees may discuss current events, policy issues, and matters of public interest at work or on duty. Such discussions are usually not “political activity,” i.e., activity directed at the success or failure of a political party, partisan political group, or candidate for partisan political office. Therefore, the Hatch Act does not prohibit employees at any time, including when they are at work or on duty, from expressing their personal opinions about events, issues, or matters, such as healthcare reform, gun control, abortion, immigration, federal hiring freeze, etc. For example, while at work employees may express their views about healthcare reform, e.g., “I agree with healthcare reform.”

Note, however, that the definition of political activity is broader than express advocacy for or against a political party, partisan political group, or candidate for partisan political office. In some cases, discussion that appears to be about current events or policy issues can be political activity. In other words, an employee cannot circumvent the Hatch Act prohibition against on-duty political activity by merely avoiding express advocacy for, or against, a political party, partisan political group, or candidate for partisan political office. It is not necessary that an employee explicitly name a political party, partisan political group, or candidate for partisan political office in order for a discussion to be political activity.

OSC considers all relevant facts and circumstances when investigating allegations that a discussion purportedly about current events or policy issues is, in fact, political activity. Among other factors, OSC looks to: (1) the content of the discussion; (2) the timing of the discussion; (3) the size and composition of the audience; (4) the relationship of the participants involved; (5) the context in which the discussion occurred; (6) the medium used (e.g., email, in-person discussion); and (7) whether a candidate or party is mentioned even if there is no express advocacy for or against the candidate or party. The following examples illustrate how these factors may apply to conduct that takes place while on duty or in the federal workplace.

Example 1: While on their lunch break, several employees discuss a recent proposal to eliminate their agency. The proposal was made by a candidate for partisan political office. However, the candidate’s name does not come up during the discussion and the discussion instead focuses on the negative effect that elimination of the agency would have upon the general public. Even though this proposal was made by a candidate for partisan political office, nothing about this discussion suggests that it is political activity prohibited by the Hatch Act.

Example 2: Several months prior to the election, an employee emails 10 colleagues an editorial critical of the proposal from Example 1. The employee adds “FYI – this proposal would be terrible for the country and we should do everything we can to stop it” to the body of the email. The editorial repeatedly identifies the candidate. OSC would need to investigate further in order to determine whether the employee engaged in political activity by sending the email.

Example 3: The day before the election, an employee shares the editorial from Example 2 on social media and specifically tags 50 coworkers in the post. The employee adds to the post “Something to

think about tomorrow.” At this point the editorial is several months old. Although the editorial deals solely with a policy issue—the elimination of a federal agency—and neither the editorial nor the social media post explicitly advocates against the candidate, the employee’s post, which is clearly about the election and directed at swaying voters, is political activity prohibited by the Hatch Act.

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