

EMPLOYEE RELATIONS

NOTES

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For the REE Agencies, USDA

Employee Relations Branch, HRD, ARS

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Political Activities

Rules governing political activities in the Federal sector appear both simple and complex . . . and can be violated both unintentionally and unwittingly. Violations can carry stiff penalties. This issue offers guidelines and examples, but if you have a specific concern about political activities, we strongly encourage you to contact your headquarters REE Ethics Staff for guidance on issues surrounding political activities.

The Hatch Act

The Hatch Act prescribes the restrictions on certain political activities of Federal employees, the District of Columbia (D.C.) Government, and some State and local employees who work in connection with Federally-funded programs. In 1993, Congress passed legislation that significantly amended the Hatch Act as it applies to Federal and D.C.

employees (5 U.S.C. §§ 7321-7326). **Under the amendments, these employees are now permitted to take an active part in political management and political campaigns in a personal capacity.**

The Hatch Act provides different rules for three different groups of Federal employees. This issue focuses on career employees below the Senior Executive Service (SES). Contact the Ethics Office for more information on the rules for other employees.

Office of Special Counsel

The headquarters REE Ethics Staff will work with the U.S. Office of Special Counsel (OSC) to make a

determination concerning incidents involving political activities. OSC promotes compliance with the Hatch Act by providing advisory opinions on, and enforcing, the Hatch Act. Every year, OSC's Hatch Act Unit provides over a thousand advisory opinions enabling individuals to determine whether their contemplated political activities are permitted under the Act. The OSC Hatch Act Unit enforces compliance with the Act by filing petitions for disciplinary action.

Violations and Penalties

Employees who are charged with violations are entitled to a hearing before the Merit Systems Protection Board (MSPB). Under the Act, the presumptive penalty for a violation is removal from Federal employment. However, the MSPB can mitigate the penalty to no less than a 30-day suspension without pay. Employees have the right to appeal the MSPB's decision to the United States Court of Appeals for the Federal Circuit.

Violations can also result in civil suits. As an example, four employees of the Department of Agriculture (USDA) were convicted for political fundraising on Federal property. The USDA employees had organized a Political Action Committee to raise money for the 1992 Presidential campaign. They collected a total of \$3,250 in checks from various individuals in a USDA building. To encourage donations, the four employees suggested that contributions to the fund might result in special consideration from the USDA officials affiliated with the Administration.

Following the election, the four created a list of USDA employees who should not, in their opinion, receive special consideration from the Administration. The four defendants each received 4 years probation. Two of the defendants were fined \$1,000 and ordered to perform community service. The other two defendants were fined \$2,500 and ordered to serve 30 days detention in a halfway house.

Political Discussions via E-Mail

Serious violations of the Hatch Act generally involve fundraising or campaigning while on official duty. However, since e-mail has become a favorite tool for communication, political discussion via e-mail is an activity that can result in serious violations as well. The following examples demonstrate the subtle, yet important, considerations used to determine Hatch Act violations in this arena.

Example #1

For example, on the day before the 2000 Presidential election, a Government employee, while on duty and in a Government building, used his Government computer to e-mail all agency employees a message captioned “URGENT! FORWARD TO UNDECIDEDS & NADERITES.” The text of the message praised one Presidential candidate and encouraged recipients to forward the message to as many other people as possible. Needless to say, this employee violated the Hatch Act when he sent this message.

It was determined to be a violation because the message was sent to a mass audience, including many individuals with whom the sender had no prior acquaintance, and the sender was on duty and in a Government building when he sent the e-mail. The text of the message encouraged recipients to forward the message to as many other people as possible because there were “only 18 more hours to bring Nader voters to their senses” The content of the message explicitly encouraged its recipients to vote for a specific political candidate and urged others to do so.

Example #2

In contrast, some political expression via e-mail may not violate the Hatch Act. For example, there was a Government employee, while on duty and in a Government building, who used his Government computer to e-mail a message to a few coworkers with whom the employee regularly engaged in a friendly political debate. The e-mail was captioned “followup on our discussion of this morning,” and attached was the text of a newspaper column critical of one of the Presidential candidate’s tax proposals, with a statement supportive of the columnist’s views. In this instance, there was no violation.

There was no violation because the content of the message expresses the sender’s personal opinion about a candidate for a partisan political office. It may also be true that the message is intended to encourage the recipients to support the sender’s candidate of choice. However, the audience for the message consists of a small group of colleagues with whom the sender might otherwise engage in political discussion, face-to-face. Even though the message was sent in a Government building, using Government equipment, while on-duty, the Hatch Act was not violated because the e-mail was simply a functional substitute for permissible face-to-face expression of personal opinion on political subjects.

Keep in mind that the use of Government e-mail for nonwork related purposes on duty is also governed by Federal regulations contained within 5 C.F.R. § 2635.704(d). Personal use of Government e-mail during duty hours is limited and can be abused. Misuse or abuse of e-mail - and/or official duty hours can result in disciplinary action.

Determinations as to whether use of e-mail violates the provisions of the [Hatch Act](#) must be reviewed on a case-by-case basis. Contact headquarters Ethics Staff for guidance. Relevant

considerations include, but are not limited to: (1) the content of the message (i.e., is its purpose to encourage the recipient to support a particular political party or vote for a candidate for partisan political office?); (2) its audience (e.g., the number of people it was sent to, and the sender's relationship to the recipients); and (3) whether the message was sent in a Federal building, in a Government-owned vehicle, or when the employee was on duty.

Hatch Act Restrictions for Career Employees below the SES level

Employees may not:

- Solicit or receive political contributions from anyone at anytime (there is a narrow exception for soliciting within the membership of a Federal employee union for its Political Action Committee).
- Encourage or discourage political activity by persons doing business with, or regulated by, USDA.
- Use the authority or influence of your office to interfere with an election.
- Engage in political activity while on duty, in a Government office, in a Government vehicle, or wearing a Government uniform or insignia. This also means you may not permit your official title to be used when your political activity is otherwise permissible.
- Wear political buttons on duty or display political materials in your office - but you may have a bumper sticker on your private car even if parked in a Government lot.
- Seek the nomination for, or election to, a partisan political office (there is an exception if running as an independent in certain

specified localities including most of the D.C. metro area).

Note: To see a complete list of permissible and restricted activities for other types of appointments go to: <http://www.usda-ethics.net/rules/index.htm>

Permissible Political Activities for Career Employees below the SES level

Employees may:

- Engage in a broad range of political activity except fundraising, running for partisan office, or politicking persons doing business with or regulated by USDA on your own time and away from the office.
- Seek election to a nonpartisan office (and run as an independent for local partisan office in certain specified localities - including most of the D.C. Metropolitan area).
- Serve as an officer in a party or candidate campaign committee in either a volunteer or on a compensated basis.
- Campaign for or against candidates by preparing and/or delivering speeches, distributing campaign materials, and organizing and/or attending rallies.
- Contribute to campaigns, develop fundraising programs, attend fundraisers; however, you may not allow your name to be included on any solicitation materials or personally host a fundraiser.
- Engage in partisan voter registration activities and partisan get-out-the-vote drives.
- Sign nominating and ballot access petitions for partisan candidates and participate in circulating such petitions.

- Serve as a delegate to a local, State, or national political party caucus or convention.
- Serve as poll watcher on behalf of a candidate or political party.
- Display political materials in your yard, on your personal vehicle, and, when off the clock, on your person.

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Important Links

U.S. Office of Special Counsel

<http://www.osc.gov/>

Political Activities Training Module

<http://www.usda-ethics.net/training/index.htm>

REE Ethics Homepage

<http://www.afm.ars.usda.gov/hrd/ethics/>

Call Headquarters REE Ethics Staff

If there is any question about possible violations on political activities or ethics issues for you or your employees, we strongly encourage you to first contact the headquarters REE Ethics Staff for guidance. Second, once an issue is raised, the REE Ethics Staff will work in conjunction with the OSC to make a determination concerning the specific activity.

* If you have any questions regarding this edition of ER Notes, please contact the **REE Ethics staff**.

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