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OSC Advisory Regarding Political Briefings in the Federal Workplace

The Hatch Act states that employees “should be encouraged to exercise fully, freely, and without fear of penalty or reprisal . . . their right to participate or to refrain from participating in the political process of the nation.” However, to protect the integrity of the civil service system, the Hatch Act imposes limitations on “political activity” by federal executive branch employees.

“Political activity” is defined as “an activity directed toward the success or failure of a political party, partisan political candidate, or partisan political group.” 5 C.F.R. § 734.101. With the exception of the President, the Vice President, and members of the uniformed services, federal executive branch employees are subject to the Hatch Act’s terms. 5 U.S.C. § 7322(1). Generally, covered employees may not engage in political activity while on duty. They also may not engage in political activity in a room or building where a federal employee carries out official duties. 5 U.S.C. § 7324(a).

Some political appointees are exempt from this prohibition and may engage in political activity while on duty or in the workplace, as long as the costs of such activity are not paid for with funds from the U.S. Treasury. See 5 U.S.C. § 7324(b). Most political appointees, however, are not exempt. Although non-exempt political appointees are generally free to actively participate in partisan political management and campaigns, doing so is not part of their official duties. Therefore, to avoid violating the Hatch Act, they must take care to segregate their political activities from their official agency duties, including when attending briefings about a party’s electoral strategy.

A briefing constitutes “political activity” for Hatch Act purposes if it is intended to convey ways for attendees to participate in or assist a partisan campaign. This type of briefing must take place outside of normal duty hours and away from the federal workplace. This rule applies regardless of whether a party official or federal employee conducts the meeting.

For example, political appointees should not attend briefings, while on duty or in the federal workplace, at which presenters discuss topics such as their party’s electoral strategies in congressional and gubernatorial elections; vulnerable seats the party wants to retain or seats the party is targeting to take from the opposing party; or campaign tactics, e.g., phone banking and door-to-door canvassing.

As always, OSC is available to assist agency ethics officials with Hatch Act questions. Please call (202) 254-3650 or (800) 85-HATCH to speak with a Hatch Act attorney.