

>> Thanks for joining us. We're very lucky today to be able to hit such a large audience at once. Individual agencies do their own training on Hatch Act and social media. We can reach as many people as possible this way. Obviously, this is a critical topic so we are very, very happy so many folks are enjoying us today. We are going to be rerecording it so we encourage you to share it with your colleagues. Social media has become such an integral part of our daily lives. It's critical that all of us as federal employees, not just those of us who work on the web but anybody who is touching social media in a professional capacity and personal capacity is able to use these tools. We know the election season is heating up. It's especially important to understand how social media interacts with the Hatch Act which governs federal employees' use of engagement in political activities. So this is a really important topic for all of us to make sure that we are using these important tools wisely. I am happy to introduce our speaker today Leslie Grogan. She has been an attorney with the special council Hatch Act for several years. She has given lots of training sessions to federal employees. We are very pleased to have her join us today. She is going to walk us through the Hatch Act, what it is and how it applies to our use of social media like Facebook and Twitter. She is going to be breaking it up into sections so it's as interactive as possible under all have a chance to ask as many questions as you have. So she is going to show a few slides, talk about a few particular topics and then we will take some questions. As Jeanette mentioned you can type your question into the chat box. We want this to be as useful and targeted to your particular situations as we can make it. So we encourage you to ask lots of questions along the way. Leslie, we are very, very happy to have you with us today and go ahead and pass the baton on to you.

>> Thank you, Sheila. Thank you, Jeanette. We here at the Hatch Act Unit office of special council are absolutely delighted to be here talking to everyone across the country. I want to let everyone know that my deputy chief Erica Hamrick is here also joining us today. You have two for the price of one. As Sheila told you, we're gearing up for the 2012 election season and we are going to be talking about what you need to know with respect to the Hatch Act and how it impacts social media. I have got a few general concepts regarding the Hatch Act that we are going to have to go over so we're all reading from the same sheet of music. Then we are going to jump right into each of the restrictions. Before we move from restriction to restriction as Sheila said we'll take some -- we'll take questions that you have. Without further adieu, I want to let you know that the Hatch Act applies to all federal executive agency employees. However, as you will see on the slide the employees are broken up into two different categories. Those categories are less restricted employees and further restricted employees. And as you can see from the slide, less restricted employees are GS employees, wage grade employees, the PAS employees which are the political appointees and noncareer SES. Moving on to the further restricted employees, there are certain positions that are at any of the federal executive agencies that are considered further restricted. We'll get to those in a second. Additionally, there are certain employees who work for intelligence and enforcement type agencies, and these are listed in the statute that are also further restricted. So every single employee who works at, for instance, the CIA, the Federal Bureau of Investigation, moving on to the next slide, our office, the office of special council, the Secret Service and all of these other investigative type agencies, all of these employees are further restricted. And as I mentioned, there are certain positions at any federal executive agency that is also considered further restricted. And those positions are career SES, administrative law judges, members of contracts appeals boards and administrative appeals judges.

>> Now I want to throw a couple of concepts out here. With the exception of the very first restriction that we're going to discuss, all of the Hatch Act's restrictions apply to both less restricted employees and further restricted employees. And they apply 24/7. They even apply when we're on any kind of leave, whether it's sick leave or annual leave. It's just that with respect to the further restricted employees, they have additional restrictions that are placed upon them and we will be touching upon that throughout the presentation because I'm sure that there is a wide variety of employees that are listening in today.

>> Additionally, I want to let everybody know that the Hatch Act also applies to part-time employees. And lastly, even those employees who are spending 100% of their time on union duty, they are still covered by the Hatch Act as well. Again, because

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we probably have a wide cross section of employees that are listening, I wanted to throw those topics out there. And I'm going to give you a couple of rules of the road, if you will, before I move to the next slide. I know that everybody listening is probably social media experts. But I also want to let you know that for the most part I'm going to be referring to that Facebook and Twitter. That's not to say that anything that I'm talking about today with respect to the Dos and don'ts and the restrictions will also apply to any other type of social media outlet that currently exists today or that anything that anybody can dream up in the future. For instance, LinkedIn. Even though I might not mention LinkedIn, everything that I say with respect to Facebook and Twitter will also apply to LinkedIn. And again any other social media outlet.

>> Additionally, with respect to what I'm going to be talking about in the activities that I'm going to be talking about, your status updates, your posts following, liking, sharing or resharing, I'm going to be referring to these types of activities. Again, if there is a new activity that a social media outlet concedes of, everything that we're going to be talking about today would again apply to anything new that you can do in the future on social media outlets.

>> Moving to the next slide. The last general definition and rule of the road that I want to present to everybody is the definition of political activity and this is something that I'm going to be referring to throughout the rest of the presentation. It actually is DiPane? The regulations and it means any activity that is directed towards the success or the failure of a political party, a candidate for partisan political office, or a partisan political group.

>> So when I refer to political activity, this is what we need to think of. And in order to give life to the meaning of this definition I have another slide that presents some examples of what would be considered political activity. For instance, taking the first graphic on your left, the left-hand corner of the slide which says "I'll keep my guns, freedom and money, you can keep the change" which is in quotes, and then you have what we all know or recognize as President Obama's, for lack of a better term, campaign graphic from the 2008 campaign. And it's in a circle with a line through it. Looking at the text, looking at change, which we know was a campaign slogan in the 2008 campaign, looking at the graphic and taking all of that into consideration it fits the definition of political activity. It is directed towards in candidate's failure. Moving on to the OMG graphic, Obama must go, that's pretty obviously directed towards a candidate's failure. Likewise, the graphics that are at the bottom of the slide, Obama/Biden pins and the Romney believe in mechanically gifted or Romney for President sign, those are graphics directed towards these candidates' success. So these, too, fits the definition of political activity. Now I want to illustrate what it is not. And as the slide says Des -- displaying any items or posting or blogging or e-mailing about any of those issues that are listed on this slide, whether it's the NRA, the affordable care act, right to life, the oppositions to the war, the Buffett tax, the pay freeze or increase to retirement contribution issues, these issues, if you were to post, tweet, blog or e-mail about these issues, this is not considered political activity because it does not meet the definition. It is not activity directed toward the success or failure of a political party, a candidate for partisan political office or a partisan political group. Now, even though, you know, people may tend to associate one of these issues with one party or one particular candidate, nobody has exclusive jurisdiction over these issues and it just doesn't fit the definition if you blog or post or tweet about these issues.

>> Additionally, number two, supporting or opposing ballot initiatives and pending legislation. Again, if you were to post or blog or tweet your support for or opposition to a ballot initiative or any type of pending legislation, it would not be political activity and to give this concept a little bit of life I'll move on to the next slide. Last year right around in time here in the Hatch Act Unit we got a lot of questions, particularly from unions regarding whether or not they could post updates on Facebook pages or tweet about or send e-mails, flyers regarding town hall meetings or other types of informative meetings regarding the furloughs, whether the federal government was going to shut down and some of the other associated issues regarding retirement and the spending cuts and the hiring freezes. And we said, yes, you can post or blog or send out these types of e-mails. These types of issues and letting employees know that you are going to talk about information regarding these issues was not considered political activity. Again, it doesn't meet the definition

of political activity. Now, before we move into the restrictions I am just going to throw it back to you, Jeanette and Sheila, and ask if there are any questions regarding these general topics.

>> Thank you, Leslie. Does anyone have any questions they would like to raise their hand or type into the chat box? Okay. Well, Leslie, while we're waiting if you want to continue. If we get some I will jump in to read them to you.

>> Okay. Great. Okay. Without further adieu we are going to talk about the first restriction. This is the restriction that impacts everybody and we get the most questions and the most Hatch Act complaints about, and this is the restriction that prohibits all federal executive agency employees from engaging in political activity while we are on duty, while we are in a federal room or building, while we're wearing a federal uniform or official insignia or while we're using a federally owned or leased car.

>> So what exactly is prohibited under this restriction with respect to social media? And I'm going to run through a whole bunch of examples here. As you will see on the slide I talk about posts and tweets. So, for instance, if we are a federal employee and we are at work and we're on duty, we cannot go on to our Facebook page and post on our timeline a post that would be in opposition of or in support of a political party, a candidate for partisan political office or a partisan political group. Additionally, moving on to Twitter, we certainly could not send out a tweet that advocates for or against a political party, a candidate for partisan political office or a partisan political group. Now, generally speaking if we're at home and we are off duty, we can certainly make those types of posts and send out those types of tweets. Again, when we are at home and we are off duty. When we are not in a federal room or building and when we're not on duty. And that foreshadows the very last bullet point on this slide. Telecommuting. We get a lot of questions about telecommuting. Just because a federal employee is working from home, that does not turn your home into a federal room or building. However, federal employees must be cognizant when they do telecommute of when they are on duty and when they are not on duty. When they're off duty. They can only participate in political activity when they are off duty. So if you want to make a post to your timeline on Facebook. If you want to send out a tweet advocating for or against a party or a candidate you have to do it when you are off duty.

>> Additionally, with respect to this restriction there are some intricacies with respect to further restricted folks. And I want to skip ahead to the next slide just very believably so that I don't believe out these further restricted employees.

>> Leslie?

>> Yes.

>> Before you move on can you take a few questions? We had a few come pouring in.

>> You bet.

>> Awesome. Thank you. So the first question is are military people in the less or more category when it comes to the Hatch Act?

>> Okay. That's an interesting question. Thank you for asking. Uniformed military service men and women are not covered by the Hatch Act. They're actually covered by a DOD directive, and that is 1344.10. Now, if you are a civilian who is working for the DoD, you are covered by the Hatch Act. And unless you are in one of those particular positions, the career SES, the other two positions, you would be less restricted. Unless you work for the DIA. All employees, civilian employees who work for the DIA, they are further restricted.

>> Okay. And then we'll take about one more and then you can move forward. Is this referring to personal Facebook accounts or Twitter pages or just accounts when it comes to the Hatch Act?

>> That's a good question and in fact I'm going to be talking about it in a couple of slides. But I can at least throw this concept out there right now. But everything I'm going to be talking about with respect to engaging in political activity while on duty and in a federal room or building is referring to our personal Facebook and Twitter accounts. And with respect to anybody who has an official Facebook account or Twitter account, whether it's your official employee page or whether it's the agency's official Facebook page or Twitter page, any official social media outlet has to be content neutral. Therefore, there cannot be any lists of likes that refer to, you know, the RNC or the DNC or any other candidates or partisan political group. Those likes and dislikes have to be removed from official pages. Websites,

Facebook pages, Twitter accounts. And at bottom official accounts have to be politically neutral and pertain only to official business. And I was going to talk about that in a couple of slides. But it's good to get that out there right now.

>> No. Great. Thank you. And lastly, if you could just speak a little louder and come a little closer to the mic, that would be awesome. Thank you, Leslie.

>> Any other questions or shall I keep discussing --

>> We do have a few if you would like to answer some more?

>> Sure. You bet.

>> Okay. So if one employee asks if they could friend the President or another candidate on his own Facebook page at his own time is that okay? Surely, he can, right?

>> Yes. If you are at home and you are not on duty and away from the federal workplace you can certainly friend the white House. And that is true for both further restricted employees and less restricted employees. With respect to further restricted employees they can -- and the same is true for less restricted employees, you can certainly friend or like parties or partisan political groups or candidate campaign pages. You can list those in your likes and your friends and there is a little change with respect to further restricted employees. We previously said that they could do that so long as their privacy settings were such that only they could see their lists of likes and friends. However, we have recently updated our social media advice, and that's on our website, and we have now -- you know, realizing the reality that surrounds social media we've listed that caveat. Further restricted employees no longer have to keep those lists of likes and friends private. But, again, if you don't have somebody listed on your likes or listed as a friend and you want to add them, you have to be at home. You have to be off duty. You have to be away from a federal workplace in order to do that. With respect to less restricted employees, if you are going to suggest to others to like or friend a political party or a group you have to do it away from the workplace. And that's different for further restricted employees. You cannot suggest to other employees to like or friend a party or a group or a candidate because with respect to further restricted employees the additional restriction that is placed upon them is that we cannot actively participate in campaigning or partisan political management, which means basically that we cannot act on behalf of or in concert with these types of entities. The political party. The campaigns or partisan political groups. Now, if we were to suggest to somebody to friend or like one of these activities, we analogize that to working in concert with the campaign or the political party, and that for further restricted employees is prohibited. And in fact my chief wants to step? And add something.

>> I just wanted to address the first part of that question in terms of the white House's official, you know, Facebook page or Twitter accounts. And I just want to make a distinction between the official white House page and, for example, Barack Obama's campaign page. A federal employee, whether less or further restricted, would not be restricted from liking or friending the official white House page even while they are at work because that's not going to be activity directed at the success of a candidate because it's the official governmental Facebook page. But in terms of the candidacy, the campaign page, that would have to occur outside of the workplace and while off duty.

>> Okay. Leslie and Erica, this is Sheila again. Sorry for popping in. I am just looking at the webinar attendance here and I think some folks have, you know, joined us just a few minutes into the webinar. I am guessing they may have missed the explanation of the less restricted versus further restricted. Since that's a fundamental part of so many of your answers, can you just real quickly review that for folks? I know you do want to move on to other slides.

>> You bet. Further restricted employees and less restricted employees are subject to all of the restrictions that we're going to talk about in this presentation, including the first restriction that we are addressing right now, which is engaging in political activity while on duty and in a federal room on building, while wearing a federal uniform or using a federally owned or used vehicle. That's the first restriction we are talking about. It applies to everybody. The difference between less restricted employees and further restricted employees is further restricted employees have an additional restriction placed on them which is the following. Further restricted employees are not allowed to participate in campaigning or partisan political management meaning that we cannot act on behalf of a political

party or a campaign or work in concert with a political party or a political campaign or a partisan political group, whereas less restricted folks can certainly go out there and campaign on behalf of candidates, in concert with a campaign. They can work for a political party or a partisan political group. Further restricted folks cannot. It's basically a spectator sport for further restricted employees.

>> Now, giving you guys some more examples with respect to the prohibition of engaging in political activity while on duty and in a federal room or building, for instance less restricted employees can share or reshare or tweet anything that you get from a political party or a candidate's campaign. However, further restricted employees cannot. And this is because it is analogous to distributing those entities' literature or materials. And that is what a further restricted employee cannot do. So, for instance, if a further restricted employee gets a tweet from a campaign, they cannot retweet it to their followers. A less restricted employee could so long as they do it when they're off duty and away from the federal workplace. And so long as the tweet -- and we'll get to this restriction in a second. So long as the tweet does not solicit for a political contribution.

>> with respect to Facebook and sharing and resharing things from the campaigns or the parties' Facebook pages, less restricted folks can do this when they're away from the federal workplace and when they're off duty so long as they don't direct any of these shares or reshares to subordinates or so long as they don't forward a Facebook message to subordinates. If they forward a Facebook message, any kind of Facebook message that advocates for or against a candidate, a political party or a partisan political group they have to do it to all of their Facebook friends. They cannot target subordinates. We are actually jumping ahead to the next restriction.

>> And with that said I might as well move on. Actually, before I move on to the next restriction I want to touch upon accepting invitations to fundraisers, watching live rallies and making online donations. Those are all things that we as federal employees cannot do when we are at work, on duty, or in the federal room or building or in a federal workplace. For instance, if we were to get a tweet from a party or a candidate that is inviting you to a fundraiser and you look at this tweet while you're at work, off duty, you are at lunch, you are sitting at your desk, do not click on the link that they provide to RSVP to the fundraiser. It is considered activity directed towards the success or party from the candidate that you got the invitation from and that would be a Hatch Act violation. Same thing with online donations. Do all of your online donations at home when you're off duty. And that's for all employees i additional, if you are in the federal workplace you cannot watch a live rally in the federal workplace. And, you know, the campaigns these days are harnessing social media and the internet in a way that we have never seen before. And, you know, some of these campaigns may -- and they have foretold us that they are going to use these live rallies in the internet world and in the social media world to increase their social media and digital footprint and to, you know, rally excitement with respect to how many people are watching live.

>> well, if you are watching live, that's activity directed towards the success of that candidate. Now, the Congress of this idea is that if you are at lunch and you happen to be watching taped rally, that would be analogous to reading an article. It's a passive activity it's not an activity that the campaign will be able to harness and use to generate excitement or to increase their digital footprint. So just watching something that has been videotaped or prerecorded would not fit the definition of political activity because it isn't something that will be used -- it won't be something directed at the success of the candidate.

>> Does anybody have any questions about these unique concepts before I move on?

>> Leslie, there is something dealing with a gray area when it comes to how do [www.whitehouse.gov/lifeevents](http://www.whitehouse.gov/lifeevents) apply? This seemstobe a gray area for people during campaign season. .gov I'm assuming anything coming from the .com will be official business. As long as it's official business, that won't fall within the restrictions. It will be something people can watch live because it's official white House business.

>> Okay. It's not going to be anything directed at, you know, the President's campaign.

>> All righty. well, we definitely have lots of questions but we'll just address the rest when you come to your next question stop.

>> Okay.

>> Thank you.

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>> You're welcome. And here is a graphic that actually -- and I should have moved to this a little bit earlier. I do apologize. Here is a graphic that illustrates the difference between what a less restricted employee can do and what a further restricted employee can do. So we have a fictitious federal employee here with a Facebook page called no ha. You can see a post on the Facebook page from Mitt Romney's Facebook page. He said we have a sacred duty to restore the promise of America and we will do it. We will do it because we believe in America. A less restricted employee can share this post from Mitt Romney's Facebook page. However, a further restricted employee could not. That's just an illustration of the concepts that I was talking about earlier.

>> Now before we move into the next restriction, because these new issues are going to be probably closely tied to the prohibition of engaging in political activity while on duty I want to press the pause button here and talk about some new applications that are out there in the campaigning world. There is something out there called Votizen. Our research indicates that it's something that allows you to discover how your friends on social media networks are registered to vote and campaign with them to elect candidates. Therefore, any kind of activity that federal employees might engage in with respect to Votizen would be considered political activity, and therefore you would have to participate in this activity again off duty and away from the federal workplace. There is a new application called whistle stop. Everybody probably knows way back in the day candidates crisscrossed the nation on trains called whistle stop tours. This whistle stop application is the social media version of the old fashioned whistle stop train tour. Our research indicates that this whistle stop application harnesses Facebook and Twitter and YouTube and all of the other social media outlets. It helps people find their candidates, track their candidates' performance and how big their candidates' digital footprint is. And there are things with respect to whistle stop that can help you mobilize you to support your friends and candidates. The bottom line is any activities that federal employees engage in with respect to whistle stop again fits the definition of political activity and would have to be done away from the federal workplace and when we're off duty.

>> Now, the Tea Party. The Tea Party is interesting because the Tea Party is not a national political party. Our research, the last time we looked at this, indicates that it's not affiliated with a political party. Additionally, it's not considered a partisan political group. So any activity that is directed towards the success of the Tea Party movement does not fit the definition of political activity for the purposes of the Hatch Act unless, unless the Tea Party group is endorsing a partisan political candidate and the activity is intended to help that specific candidate win a particular election.

>> For example, in Florida the Tea Party actually was able to get a candidate, two candidates, one on the ballot in the eighth district for Senate and one on the ballot in the 12th district for Senate. So because the Tea Party was able to get candidates on the state ballots it's considered a state party in Florida. Therefore, any activity directed toward a Tea Party candidate running for election in Florida would fit the definition of political activity and any of those activities for or against those candidates or the Tea Party in Florida would have to be engaged in off duty and away from the federal workplace.

>> Additionally, the Tea Party has a PAC. Various PACs. There are also several Super PACs out there. PACs are different from the Tea Party generally. PACs are actually associated with candidates. They are organized for the purpose of endorsing and supporting a partisan candidate that either espouses the Tea Party movement, you know, mission and ideologies or with respect to the Super PACs, you know, the Republican or Democratic platforms as well. Therefore, any activity if support of these PACs would be considered political activity. We also have to be very cognizant as federal employees. We cannot solicit, accept or receive political contributions for these PACs.

>> And then, lastly, there is something called move on.org. It has a civic action part of its organization and it has a PAC part of its organization. Any activity related to the PAC is considered political activity for purposes the Hatch Act. Additional, you could not solicit, accept or receive political contributions on behalf of moveon.org's PAC. Americans elect is an online movement to nominate a candidate for the 2012 presidential election. They've actually been able to get candidates on the ballot in about 15 different states. Therefore, Americans elect is

considered a political party. Therefore, any activity directed towards the success of Americans elect does, indeed, fit the definition of political activity. Therefore, any of that activity in support for or in opposition to Americans elect would have to be done, again, off duty and away from the federal workplace.

>> Does anyone have any questions before we move on to the next slide?

>> Yes, we do have some. If a user posts or tweets a political activity at home at night, the post will remain on their profile and be visible during the next work day and beyond. How does the Hatch Act apply to this scenario.

>> That's a good question. The answer to that question will become apparent when we get into a couple of slides. It's with respect to the restriction of using the prohibition against using our official authority or title to influence or interfere with an election. But I'll foreshadow it here. An employee can populate their Facebook profile fields. And I actually have a graphic related to this. You can list where you work. That you are a government employee and where you work. You can also list in the fields for your profile your political views and your interests. That, in and of itself, does not violate the Hatch Act. Additionally, even if you have your profile fields filled in and then you decide to make a post on your timeline advocating for or against a party or a candidate and it's a general post regarding, you know, for or against one of these two entities, that will not be a Hatch Act violation either. What would be a Hatch Act violation is if you make a post on your timeline that says I am a federal employee IT specialist for federal agency A-B-C and based on my experience I think candidate X is the best person for this political office because of my work at agency A-B-C. The nexus there between using your title and your standing as a federal employee is very close. You have just used your -- abused your official title and position to interfere with and affect the results of an election. That would be a Hatch Act violation.

>> Erica is going to step in and add something to that explanation.

>> To go back to the question, because I understood the question I think a little bit different than Leslie did. If what the caller was concerned about was at night away from the office, off duty I post something that is directed to success or failure of a candidate, it appears on my Facebook page the next day I am at work, it's still there. Do I now have a Hatch Act problem? And the answer is no. In terms of the activity, we look at when you engage in the activity. So when you posted that message, if it was off duty and out of the federal workplace, the fact that it now stays there, you know, the rest of the week while you're at work, that doesn't matter. What matters is when you engage in the activity.

>> Yeah, that makes sense.

>> Great. And we're actually getting this one question quite a few times in different ways. But pretty much people want to know is there any distinction for engaging in political activities, tweets, et cetera during the work day from your personal smartphone as opposed to from your government-provided computer? What about during your lunch break?

>> There is no distinction. If you are in the federal workplace and you are using your own personal smartphone but you're still in the federal workplace, you're still going to violate that restriction regarding engaging in political activity while in a federal room or building. If you are not on duty, you're not violating that element because there are several elements to this restriction. On duty being one of them. But you're still in a government office. Even if you use your personal smartphone for this type of political activity, it still would be a violation.

>> And this is a common misconception in terms of the Hatch Act. A lot of people think as long as I'm not using the government E mail, the government computer, the government Blackberry, I am using my only personal e-mail are or what have you, it's fine. But the Hatch Act prohibition doesn't address what you are using whether it's government e-mail, Blackberry, computer. It's when you are on duty or in a government room or building. Same thing with e-mail. You send an e-mail from your private Yahoo account. If you are on duty or in the workplace, it's a Hatch Act violation regardless of the fact that you didn't use your government e-mail account.

>> Oh, great. And we've had someone say does Starbucks count?

>> If you are at Starbucks and using your personal smartphone, then obviously you are not on duty, unless you are telecommuting, and you are not in the federal workplace. So as long as you are not on duty, as long as you are in a federal room or building, that activity is perfectly acceptable.

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>> Okay. Great. I'm glad you mentioned as long as they are not tell working or telecommuting because I think that's where a lot of people are coming from. People want to know if they are on travel and off duty but they only have their work laptop, is that a Hatch Act violation as well?

>> If you are on travel, that's a little different. If you are on travel and you're not on duty, and let's say you're in the hotel and you have your work laptop and you're using your personal e-mail account or you are on your personal Facebook account, political activity is absolutely fine.

>> Okay. Great. Did you want to take some more or do you want to move on?

>> I think we probably should move on to the next restriction and then we can certainly take more questions after that.

>> Thank you.

>> The next restriction is that federal executive agency employees may not use our official authority or influence to interfere with or affect the results of an election. And as I was saying earlier in the presentation, we get a lot of questions from many different federal employees regarding their Facebook profile and Facebook wall. And then ask us all the time, if I have filled out my profile field -- and let me move on to the next graphic. We have our fictitious government employee here. Less restricted government employee. NO HA. She works for the U.S. department of government and she filled out some of her other field. Her philosophy and other activities and interests. Again simply filling out these fields will not violate this restriction. The prohibition against using our official authority to influence or interfere with or affect the results of an election. Additionally, even if the fictitious employee No Ha decides to go on her Facebook timeline and maybe a post advocating for or against a political party or a candidate for partisan political office or a partisan political group and she does not use her title or position in that individual post, her general post saying candidate X is great, I'm voting for him, you should, too, not a Hatch Act violation of this prohibition. It's when that government flow, No Ha in this instance says as an employee of the U.S. department of government and my work at this agency I know that candidate X is our man and the best guy for the job, that is when she has violated this restriction. She has used her official title and standing as a federal employee in her Facebook post to bolster her opinion for this candidate. That fits the definition of political activity. And regardless of it's your Facebook wall or a tweet or if you are on LinkedIn, if you are using your official title in your advocacy or your standing as a federal employee in your advocacy or opposition to a party or a candidate, that would be a violation of this restriction. Additionally, we get a lot of questions regarding subordinates and people ask us all the time, can I trend a subordinate on Facebook? Now, while we don't necessarily recommend this type of activity and it's not necessarily a great idea, it's not -- it's not prohibited. But if a supervisor were to send out a Facebook message or make a post on their timeline in Facebook, they have to do so generally to all of their friends, and they cannot target their subordinates because this use of official authority prohibition prohibits federal employees from coercing anyone into participating in political activity. And this affects the supervisor's subordinate relationship because there's case law out there that says this relationship is inherently coercive. Therefore, in the social media realm we advise federal employees if you are supervisors and you have subordinates who happen to be friends, you certainly cannot target those subordinates with any kind of posts or message that fits the definition of political activity. For instance, you could not post on a subordinate's Facebook page anything advocating for or against the political party or a candidate for partisan political office. You couldn't send a Facebook message directly to a subordinate. Quite frankly, that goes for e-mail as well. You cannot send e-mail to subordinates advocating for or against candidates or political parties. Same thing for tweet. You couldn't send a tweet to a subordinate that happens to be following you on Twitter if that tweet is advocating for or against the success or failure of a political party or a candidate for partisan political office.

>> And like I said earlier in the presentation, all agency social media, whether it's the agency itself or whether it's an employee who has an official page, whether it's Facebook, Twitter or a website, these official social media outlets have to remain politically neutral and it can only discuss business. Employees' personal use of social media, however, when they're off duty, when they are away from the federal workplace, so long as they are not targeting subordinates and so long as they are



not going to solicit, as I'm going to talk about in the next slide or two, they can on their personal site engage in political activity. Does anyone have any questions at this point?

>> Leslie, yes, we do. I am getting a lot of questions about who is classified as less restricted and further restricted. Are you going to touch on that or should we wait?

>> Okay. Well, yeah, I can remind everybody that further restricted employees, and I will jump to the beginning of the slide presentation if you all bear with me for a second --

>> Leslie, think is Sheila. They understand how you described it. But if you could give some examples of the types of people who fall into that category that would help a lot. Is it SDS? Is it people from the restricted agency? I know you covered it early on. Again, those people who joined a little late maybe not catching all of that. Thank you.

>> Okay. Further restricted employees are employees who work in the following positions. They are career SDS, administrative law judges, members of contracts appeals board members or administrative appeals judges. These four particular positions, if you hold one of these four position at any federal agency, you are a further restricted employee. Additional, there is a number of investigative and prosecutorial type of agencies, intelligence agencies that are actually listed in the statute itself and in my slides at the beginning of the presentation that any employee working at these agencies are going to fall into the further restricted category. For instance, all employees who work at the FBI, Secret Service, CIA, NSA, NSC, the defense intelligence agency, the merit systems protection board, the office of special counsel. Those types of investigative agencies that are listed at the beginning of my slide presentation, all employees who work for those agencies fall within the further restricted category.

>> Thank you. And something else that's been coming in a lot is -- it goes back to the definition of off duty because some people still are confused to like when you come to your lunch break and you're outside a Federal Building. If you could clarify that, please.

>> Absolutely. We can certainly clarify that.

>> In terms of on duty, the Hatch Act regulations define it as either, you know, in a pay status other than like paid leave. If you on leave without pay or annual leave or sick leave you're not on duty. In a pay status or when you are representing the government in a official capacity. When someone is on their lunch break, it depends on whether their agency considers them on duty or not. I know, for example, here we all have, you know, like a half an hour lunch that we have to take and we are not considered on duty. We are not paid during that half hour. So if that's the way your agency works and during that half hour you're not paid, you're not going to be considered on duty. So you are not going to be subject to the political activity on duty prohibition. But again, as Leslie said earlier, if you are still in the Federal Building you are still going to be subject to the political activity, no political activity while in a Federal Building prohibition. In terms of lunch you have to be off duty in terms of not being paid and outside of the workplace in order to be able to engage in political activity.

>> Great. Thank you, Erica. And also we've been talking about tweeting a lot, but this one is specifically dealing with official government tweeters. And so people who tweet from official government accounts basically can they follow political Twitter accounts and are there any penalties doing so? These are official government tweeters. Can they follow other political accounts?

>> What kind of political account? Do we have any idea?

>> We didn't get clarification. But maybe they will chime back in. But while we're waiting --

>> this is Sheila. I would say, for example, could someone who is managing their official Twitter account follow a presidential candidate? Can they follow the White House? I think those are the kinds of questions that would come up there.

>> Well, and this is Erica, it depend on exactly what they're following. In terms of an official agency Twitter account and someone who is sending out Twitters via this official account, certainly they can follow the white Houses because as I mentioned earlier if it's the white House account, it's the official white House account. They can follow any other federal agency. In terms of candidates it depends because if they are following the candidate's campaign Twitter account then the answer is going

to be know because that's an agency official Twitter account. All of the follows, the tweets, whatever have to be official. So following a campaign Twitter account would be prohibited. But, for example, like I said earlier whether it's the White House or maybe there is an official reason that an agency official Twitter account is following some member of Congress. Maybe that member of Congress is on their appropriations committee and so they're following the member of Congress' official Twitter account. That would be okay. But in terms of that member of Congress' campaign Twitter account, that would be a problem for the official agency account to be following. Does that distinction make sense?

>> Yes, that's very clear. Thank you.

>> Okay.

>> Thank you. And we actually got a really good question about summer workers. Someone wants to know at their agency they employ a lot of college students who may work anywhere between 40 hours a week during the summertime to 10-15 hours a week during the school year. Can you talk about the Hatch Act's applicability to these types of employees?

>> Well, again it's going to depend. You know, generally as Leslie mentioned earlier, you know, even part-time, even temporary employees are covered by the Hatch Act. But it's going to depend on each employee's specific circumstance. And if someone has a very specific question, I encourage them to get in touch with us because there are a couple of advisory things on our website dealing with this. In terms of if the employee meets certain criteria, they may only be covered by the Hatch Act when they're on duty. So, for example, if someone is working just for the summer, they may fall within that category. So they wouldn't be able to engage in all these activities we are talking about while they are at work. But once they are outside of work they would no longer be covered by the Hatch Act. So, for example, they could even solicit political contributions. But if you really are fact specific whether an employee is going to be covered by the Hatch Act all the time or just while on duty. If anyone has a question specific to a certain employee's situation, please call our office or e-mail us and contact information is at the end of the presentation and we can kind of go through the specific information about that employee's circumstances and figure it out.

>> Thank you.

>> Would you like to move forward or take some more questions?

>> If people have additional questions we can certainly take them.

>> Awesome. This one is about disclaimers. Disa disclaimer stating views are not associated with your employer matter in such situations?

>> Do we have any clarification on that question?

>> So, basically I guess someone is saying if they are about to post something and they kindly put a disclaimer before their post that this is in no way affiliated with whom they work for, does that count as not been in violation?

>> Certainly if an employee wants to put that kind of disclaimer on, you know, whatever kind of posts they are making on Facebook or what have you, you know, that's fine. But a disclaimer like that is not going to basically negate an otherwise use of official authority. So, for example, if someone posts the following on their Facebook page. I am an employee of the EPA, you know, and I've seen, you know, all these regulations take effect, what have you. I know that candidate X is going to to be best for the environment because of my experience. That's going to be a use of official authority problem and no disclaimer is going to help that employee. Does that answer the question?

>> Yes. Thank you. And funny enough we are getting a lot of questions about bumper stickers. Can people post a bumper sticker for political candidate on their private car?

>> Yes, they can. Absolutely.

>> Okay. Great. That probably was the easiest question you have answered so far.

>> I see that we are moving up on the hour and so I would like to get to the last restriction. It's really, really important. And that restriction is that we cannot solicit, accept or receive political contributions no matter what the vehicle. So, for instance, we cannot post, tweet or put a comment on a blog or send an e-mail out that says please donate to candidate X or we need to support candidate X. I donated to candidate X. You should, too. That would be a violation of this restriction. We get a lot of questions in the office with respect to the Facebook wall and we get a question that says, well, I am a federal employee and one of my Facebook friends has

posted, you know, a solicitation on my timeline. Have I now violated this prohibition? what we tell the employee is no. You didn't put that post on your wall. Someone else did and you can't control what other people put on your wall. So that in and of itself is not a Hatch Act violation by you. However, we also tell the employees do not give that post the thumbs up with the like function on Facebook or don't post something after that on your timeline that adopts that your friend's post and Picasso copier it your own. If you do that shall then you have then solicited because you have taken your friend's post and you have adopted it and you have made it your own.

>> So, for instance, if your friend puts a solicitation -- for instance, let me move to the next slide. We're going back to the fictitious employee No Ha. And No Ha, as you see, has made a post. The Obama campaign needs our help. Please make a donation here. They have put a link that sends you to the campaign's donation website. This is a violation. No federal employee can do this. However, let's say that, you know, Jane Doe, a friend of No Ha, made this post on No Ha's Facebook account. If that's the case, No Ha -- this federal employee that we've named No Ha has not violated this prohibition. She has not solicited because it's her friend who put the post on her Facebook wall. However, if our federal employee were to post something that says, I agree, now she has solicited because she has adopted that post. And it doesn't matter if it's via Twitter, via e-mail or even in person or over the telephone. We cannot solicit, accept or receive political contributions. We can't forward invitations to other people to fundraisers whether it's a retweet, whether it's a Facebook message that you send to all of your Facebook friends or, like I said, if it's an e-mail that you forward to someone. If it's inviting FEMA fundraiser, that is -- inviting people to a fundraiser, that is a violation of the Hatch Act. If it has a button in your posts, tweets or e-mail, that's a violation of the Hatch Act. You have solicited for political contributions.

>> Leslie, this Sheila. To make sure this comes through Crystal clear, this is regardless of whether you are on federal time or not. This is any time this is prohibited, correct?

>> Absolutely. This restriction applies to all federal employees 24/7. when you are on duty. when you're off duty. when you are on leave. It applies all the time. And likewise the use of official authority restriction applies all the time as well. Does anyone have any questions about the solicitation restriction?

>> Yes, we did have one come in. How do these endorsements/solicitations rules apply in the realm of pinchers? For example, if the images have embedded links to donations, et cetera.

>> This is Erica. I have to be honest. Pintrest is not something we have talked a lot about in the Hatch Act Unit or have considered. But is the question if the employee has, I guess, pinned to a particular site and that site has a solicitation on it? Is that what the question is?

>> Yes. That's what it looks like. Oh, yes, and they say yes.

>> I think it would depend on how it appears on the employee's wall. If the employee, you know, pins to a certain site and it just says on the employee's wall, you know, they have pinned this location and there is nothing on the wall that solicits, I think that would be fine even if when you go to that site that they've pinned there is a solicitation on that site. We would not view that as soliciting. Similar to we advise employees that, you know, you can -- less restricted employees can put links to campaign websites on their Facebook page even though when you go to that campaign website usually one of the items on the home page of the campaign website is, you know, a button to donate, which then takes you to the contribution page. As long as the employee is not linking directly to the contribution page but just to the general page of the campaign site we don't view that as a solicitation. So I think that may be analogous to the Pintrest. But that may be something we need to look into more because I'm not sure many of us in the Hatch Act Unit are that familiar with Pintrest. It's kind of a new thing.

>> Thank you, Erica. And someone wants clarification when it comes to political contributions and does political contributions also apply to issues as well?

>> If the employee is referring to contributing to like the NRA or another non-partisan interest group, then, you know, federal employees can solicit for contributions to non-partisan interest groups like the NRA. But Erica wants to step in and add to this.

>> You need to be really careful to know about the group that you are soliciting for

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because a lot of these groups, as Leslie mentioned earlier, for example move on.org, a lot of them have different components to them. For example, even NRA I think has a political action committee. Has a PAC. So if you are soliciting for the PAC part of the NRA, that's going to be prohibited under the Hatch Act. Whereas, maybe if you are soliciting just in terms of, you know, general issue advocacy part of the NRA, that may be okay. But it's really going to depend on what exactly you are soliciting for and what that contribution is going to be used for. So we caution federal employees to really know what arm of an organization they would be working for in that regard.

>> Thank you. We have a question about what can you tell us about enforcement against violations? Can you talk about what some of those enforcements are when people do things like this?

>> Absolutely. And that, actually, will lead me to the disciplinary action slide of the presentation. The written into the statute itself, the Hatch Act says that if you are found to have violated one of these restrictions the penalty is removal. Automatically. If we prosecute the violation before the merit system protection board. Now, if we're prosecuting a violation and if the board unanimously agreed that removal is not appropriate the board would then issue a suspension. However, the suspension cannot be less than 30 days. And that is pursuant to the statute as well. And any suspension that the board would issue is unpaid. And this is all written into the statute. And again this is only for those cases that we actually prosecute before the merit systems protection board. You know, we do get cases into our unit all the time that are resolved in other ways. We can settle a case before prosecution. We even can settle a case during prosecution. And each case is very different. How we resolve each of our cases is entirely dependent on the facts of the case.

>> Erica is going to add something to that?

>> In terms of examples of the types of disciplinary action employees have received for engaging in the types of activities we have talked about today in terms of social media, we don't have any examples because it's really the 2010 and the current election cycle that we're starting to get more questions from employees about this and starting to see employees engaging in, you know, Hatch Act prohibited activity via social media. So we don't have examples of cases we have taken to the board dealing with social media. However, there are lots of examples of cases dealing with e-mail, which is pretty analogous, and E penalties for employees sending political e-mails at work to subordinates that solicit, and they have ranged from, you know, removal to 120-day suspension to, you know, maybe a 60 or 30-day suspension. It's been all across the gamut. But pros have been removed from their employment for ending e-mails at work because, you know, they September them to -- sent them to subordinates, for example, or the e-mail contained a solicitation.

>> That's great. Thank you. So speaking of the NRA or any group that may be seen as hyperpolitical right now, or the ACLU, planned pattern hood to there is no reason an employee cannot like them on Facebook, correct?

>> Correct.

>> That one was easy, too. Okay. We got to get you some more tough ones. Okay. So I know we have been talking about solicitations. But we still are getting many questions when it comes back to the distinction between personal and professional Facebook pages. So we have one who says can you distinguish between personal social media sites and agency official business-only sites. However, does the same rule apply if, for example, you are a Facebook admin for your agency's official Facebook page and you make comments on your own Facebook wall or timeline?

>> Well, again if you have a personal Facebook account and you're off duty and away from the workplace, you can engage in activity on your Facebook page. You can, you know, list your likes. List your following on Twitter if you have a Twitter account. List your interests and those can include political parties, candidates, partisan political groups. Now, if this person is administering the official agency Facebook page, again that Facebook page has to be content neutral. It cannot have any posts regarding candidates, parties or partisan political groups. It can't list in its list of likes or interests any political party candidate for partisan political office or partisan political group. Does that make sense?

>> Yes. And they did a follow up saying they were asking because on Facebook the personal Facebook is linked to the official Facebook account if you are an administrator.

>> So this administrator has a Facebook account and it is linked through Facebook to the agency's official Facebook account?

>> That's how it's reading right now. Can we get clarification, caller, on that? If you can send something in? In order to be an agency administrator, that is the policy. That's what just came back in.

>> That is the first we have heard of that. I think that person may want to contact us or, you know, contact Leslie. We need to get a little more information on exactly how that shows up. For example, if it's the employee's personal Facebook I will page and the agency Facebook page is just one of the employee's, you know, likes or whatever or one of their, you know, friends, I don't see a problem. But if the employee's personal Facebook page somehow suggests that it's tied to the official Facebook page, then there may be more of an issue. I think we need to talk to that employee and get more information.

>> Okay. Yeah, that will be great because this is really hot right now. We are getting a lot of comments. People are saying that's Facebook's rule. Yes, the person is correct. Some people are saying that that is a requirement. They are coming in so fast. It says Facebook technically allows you to have only one profile. However, many people that are official admins create one for the work. So that is a tip that someone gave someone. But this is a really hot topic right now. I think that is a good idea for them to contact you directly since it seems to be kind of a gray area. It says right here -- yes?

>> Yes. Like I said, that's the first I have heard of it. So it's not something we have considered. We just need to get a little more information about exactly how that appears.

>> Okay.

>> And, in fact, if after talking with a couple of these employees we get a better handle on this we could possibly put a frequently asked question on our website or advisory position on this issue once we have considered it a little bit further.

>> Okay. And someone tried to -- they actually recommended some clarity, which is they think that the question is getting at you log on to Facebook with your personal credentials but then you have admin rights on designated pages. It's not visible to anyone other than the admin rights and that is set up that way.

>> If that's the case, if there is no kind of -- if only the person you have the admin rights knows that they have their personal page and also have admin rights for the agency's official page, if they're the only one that sees that and their friends, followers, members of the public, what have you, they don't see that connection then I don't see any concern with the employee who has his personal page and in his free time posts political content on it. But then also maintains the agency's page keeping it official. As long as that connection is not visible to anyone else other than that person, I don't see any Hatch Act implications at all.

>> Okay. And then we had an example come in. The OPM asks followers on Facebook to post an example of \$50 means to them which is part of the social media push for payroll tax increase. Is that in any way a Hatch Act violation?

>> I am sorry. Can you repeat the question a little bit slower for us?

>> Sure. It says OPM asks followers on Facebook to post an example of what \$50 a month means for them which is part of the social media push for extension of the payroll tax increase. Is that somehow in violation of the Hatch Act?

>> No.

>> Okay. Thank you. I'm going to have to find some tougher ones. More bumper sticker questions. Regarding comments about bumper stickers on personal cars that is supporting a particular candidate, would there be a violation if people are using their personal cars for official duty?

>> Yes. Yes. Actually, that would be a violation.

>> It depends. The regs have some pretty specific examples when it comes to bumper sticker. Obviously, if it's an official vehicle, no political bumper stickers. It's a personal vehicle and the employee uses that personal vehicle on a recurrent basis for official business, then the bumper sticker has to be covered while on official bases. Even if they don't use it on a recurrent bases but it's clear when they are using the vehicle, it would have to be covered. The example I like to give is like postal service employees who use their private vehicles to deliver mail. They would need to cover any political bumper stickers when they are delivering mail. Or there is some like inspectors who go out there, like if you work for the USDA and they inspect meat facilities or, you know, poultry facilities and that's what they do,

drive from facility to facility. They would need to cover their bumper sticker while they are engaged in that official business.

>> Thank you. Let's see here. Can someone consult or work on someone's campaign for public office on their own time and resources as long as they submit an outside employment form?

>> If you are a less restricted employee you can volunteer for a campaign so long as you are doing it in your personal capacity, so long as you do not solicit, accept or receive political contributions and so long as any of your volunteer activities on behalf of the campaign is conducted when you are off duty and away from the federal workplace. Further restricted employees, however, cannot volunteer for a campaign. Now, whether your agency internally requires you to fill out any form, and I'll getting --

>> well, I think the person is asking more about a paid position, like a paid consultant type position. I think that's when you definitely need to talk to your ethics officials regarding the outside employment rule. Same thing would apply to regard to volunteer. If you are less restricted you can be a paid consultant or what have you. But definitely talk to your ethics officials because there are other ethics rules that would apply.

>> We had a brave person raise their hand to ask their question live. So with that I'm going to unmute them. So, miss Marshal, you are now live. Connie, can you hear us? And if we can't get through to Connie, we will keep going once she plugs in. Connie, you are live if you can hear us. While we're waiting another comment came in that they understand that the Hatch Act refers directly to political candidates and campaigns, but are there any resources guidelines on how federal employees are allowed to engage, advocate, support particular bills and laws? This is a frequent issue for our agency and the Hatch Act term is thrown around quite often but it sounds like that it doesn't actually apply for bills, et cetera?

>> Well, you know what? If you are referring to your particular federal agency, I would advise that that federal employee talk with his or her internal ethics officials with respect to that particular question.

>> Okay. All right. Well, while we're waiting only that we are about ten minutes out from the webinar. Would you like to take any more before we start wrapping up or is there something else that you did want to touch on that we might have missed?

>> The only thing I want to put out there is our contact information. We want to get as much information out there to the public. We don't want to hide the ball. We welcome questions. We have a 1-8 00 number and that's a hotline that one of the attorneys each day mans that hotline. If you leave voicemail message with your question we will get back to you within 24 hours. We also have a lot of information on our website. As I mentioned we have frequently asked questions and answers as well as advisory opinions out there on the website. And it's there. Additionally, if someone wants to send us an e-mail we have an e-mail act. Hatch Act@OS CDOT gov where we field questions as well. If there are any agency officials who want us to, you know, speak to their agency in particular, there is a contact information on how to request OSC speakers and we go out to agencies when we can to conduct these types of sessions about we can conduct a broader Hatch Act session as well or again speak to social media.

>> Irka and Leslie, this is Sheila. Before we wrap up one thing I wanted to speak to you quickly about is you all have covered a tremendous amount of information. However, it's been incredibly helpful. Obviously there is a lot of complexity. We have gotten some questions about whether there is a checklist or some sort of visual that could help people. There is an infographic at oh my gov.com which is sort of a Dos and don'ts checklist. If there is any way you can pull that up and take a peak. Are you familiar with that? The format is useful. It's in plain language and it says here are the different scenarios and here is what you can do if you are fully restricted or less restricted and that would be a great thing but we don't know if you bless the accuracy of that to be approved.

>> If it's the graphic I am thinking of, that graphic is actually wrong.

>> Okay. And that is out there. I think in the spirit of social media, you know, ifings this are out there I think it's great for us as a community respond to that and come up with something that is more accurate. So maybe that's something as a follow up that we can work with you