

DOECAS PARTISAN POLITICAL ACTIVITY RESTRICTIONS 2020

As activities associated with the 2020 elections gain both momentum and increased prevalence, this email is to remind you that, as a federal employee, you are subject to the Hatch Act, which contains restrictions on the political activities of Executive Branch employees.

How the Hatch Act applies to you depends upon your appointment type. All Department of Energy (DOE) employees have restrictions that prohibit them from engaging in certain political activities (e.g., fundraising). There are also restrictions that prohibit certain activities based upon the time and location of the activity (e.g., while on official duty or in the Federal workspace). Career members of the Senior Executive Service (SES), however, may not actively participate in partisan political activity even if off duty and off site. While career SES members continue to have the ability to express their opinions, they must seek further counsel before engaging in any partisan political activity.

Please read this memorandum carefully, as it contains guidance from the Office of Special Counsel (OSC), the agency that enforces the Hatch Act, regarding: (1) what types of activities are prohibited; (2) what are permitted activities; (3) how to conduct mission related activities within the Act; (4) participating in campaign activities; (5) using email and social media; and (6) expressing views about current events and policy issues at work or on duty.

THIS IS IMPORTANT: The penalty for violation of the Hatch Act may result in removal from federal service, reduction in grade, debarment from federal employment for a period not to exceed 5 years, suspension, reprimand, or a civil penalty not to exceed \$1,000. Violations of the Hatch Act are enforced by OSC, not DOE.

PROHIBITED ACTIVITIES FOR ALL EMPLOYEES

QUESTION: What types of activities are generally prohibited by the Hatch Act?

ANSWER: You and every other DOE employee are prohibited from:

- Using official authority for the purpose of interfering with or affecting the result of an election (this prohibition includes items such as the timing of grant announcements);
- Coercing an employee to engage in any political activity, including voting or not voting;
- Seeking to influence, encourage, or discourage the political activity of any person doing business with or affected by the policies of the Department;
- Using your official title while engaging in an otherwise permissible political activity;
- Soliciting, accepting, or receiving financial contributions for a political candidate or party (with one limited exception described below);
- Being a partisan candidate for public office (There is a limited exception allowing some employees to run as independent candidates in certain partisan elections. Please seek advice from an ethics counselor if you want more information about this exception.); or

- Using official resources, including a DOE e-mail account, DOE computer, and non-public information, for political purposes

QUESTION: What types of activities are included in the prohibition on soliciting contributions for partisan campaigns?

ANSWER: You and every other DOE employee may not:

- Request or accept financial contributions for a partisan political party, candidate, or campaign;
- Sell tickets to a fundraising activity of a partisan political party, candidate, or campaign;
- Allow your name to appear on an invitation to a fundraiser as a sponsor, host, or a point of contact;
- Host a fundraiser (however, your spouse may host such a fundraiser, if he or she is not subject to these restrictions);
- Allow your official title to be used in connection with a fundraising activity;
- Solicit, accept, or receive uncompensated volunteer services from a subordinate; or
- ‘Like’ or share social media posts, or forward emails, that ask for contributions or donations to a political candidate or partisan political group, including invitations to fundraising events.

There is one exception to the general prohibition on soliciting political contributions for partisan campaigns. You may (unless you are a career member of the SES) solicit financial contributions for a political purpose if (1) both you and the person you are soliciting are members of the same Federal labor organization or Federal employee organization, (2) the contribution is for the political committee of the labor or employee organization of which you both are members, and (3) the person being solicited is not your subordinate. All three of these conditions must exist.

PERMITTED ACTIVITIES

QUESTION: What types of activities are permitted by the Hatch Act?

ANSWER: You and every other DOE employee may:

- Register and vote as you choose;
- Express opinions about candidates and issues;
- Contribute money to political organizations or candidates;
- Participate in nonpartisan voter registration drives;
- Attend political fundraising functions, rallies, and meetings;
- Sign political petitions;
- Campaign for or against an issue that is not specifically identified with a political party, such as referendum questions, constitutional amendments, or municipal ordinances;
- Campaign for or against a candidate in a nonpartisan election;
- Serve as an election official whose duties are nonpartisan by law; and
- Be an independent candidate in a nonpartisan election for public office.

In addition, you may (unless you are a career member of the SES) actively participate in planning, organizing, or conducting a fundraising activity of a candidate for partisan political office, a political party, or a partisan political group, provided that you do not solicit or accept contributions. For example, you may stuff envelopes for a partisan political candidate, campaign, or party, including literature that solicits a money contribution, provided that your name or signature does not appear on the solicitation material.

However, all permissible political activities, including those listed above, are subject to the following four limitations, which prohibit Executive Branch employees from engaging in political activities:

- While on duty (including while telecommuting and even if using a personal device to engage in political activity);
- While in any Federal office or workplace (a room or building in which any Federal employee discharges his duties; this includes break rooms, conference rooms, cafeterias, fitness facilities, and union offices, if located inside a federal building);
- While using a Government vehicle; or
- While wearing an official uniform, badge, or insignia identifying DOE (this includes shirts and pins with an agency insignia).

Only if you are a DOE employee who was appointed by the President by and with the advice and consent of the Senate (other than the Inspector General), are you exempted from these limitations under certain circumstances.

CONDUCTING MISSION RELATED ACTIVITIES

QUESTION: Can an event I am planning that will involve a DOE official and a current officeholder or candidate be considered political even when the DOE official is talking about DOE programs?

ANSWER: Yes. OSC has issued guidance with regard to the conduct of some official activities. As a general matter, an appearance by a DOE official at an event constitutes political activity if the predominant purpose of the appearance is the success or failure of a political party, partisan candidate, or partisan group. Determining whether an event should be classified as official or political requires a frank and thorough factual analysis of the circumstances surrounding the proposed event. The OSC has determined that events that may look official (e.g. ribbon cuttings and grant announcements and other similar mission-related events) can nevertheless be used to increase media attention on political candidates (incumbent officeholders are often simultaneously candidates) and constitute a prohibited political activity. OSC has identified a number of factors for agencies to consider when determining if an event is official or political. Express advocacy of the election or defeat of a candidate is not a pre-requisite to a finding that an event is political and prohibited. CONTACT AN ETHICS COUNSELOR FOR REVIEW AND ADVICE IF YOU ARE PLANNING A DOE EVENT IN WHICH A CANDIDATE, INCLUDING A CURRENT OFFICEHOLDER, WILL PARTICIPATE.

Further, because the rules regarding official/political travel are complex, if your duties include scheduling, advancing, or accompanying a DOE official on official travel, you **MUST** contact an ethics counselor for guidance well in advance of departure if travel involving a political purpose is contemplated.

MISCELLANEOUS CAMPAIGN ACTIVITIES

QUESTION: May I volunteer to work for a candidate who is running in a partisan election?

ANSWER: Subject to the four restrictions (only off duty, not in a federal building or government vehicle, and without government indicia), you may (unless you are a career member of the SES) actively participate in a partisan election, including participation in the following activities:

- Organizing or speaking at political rallies;
- Participating in partisan voter registration drives;
- Distributing campaign literature;
- Working on a phone bank (provided that financial contributions are not solicited);
- Transporting voters to the polls;
- Managing a campaign; and
- Supervising or organizing volunteers (provided no subordinates).

Only those employees who are appointed by the President by and with the advice and consent of the Senate may participate in political activities while on duty and may hold partisan political meetings or receptions (other than fundraisers) in their conference rooms during normal business hours. However, any refreshments served at these types of events, such as meetings or receptions, must not be paid for with appropriated funds. In addition, DOE employees who are not appointed by the President by and with the advice and consent of the Senate may not attend such meetings

If you are a career SES member, you may not actively participate in partisan political activities.

QUESTION: May I wear a partisan political button or have a partisan bumper sticker on my car?

ANSWER: Wearing partisan political buttons is considered participating in a partisan political activity and, thus, is subject to the four limitations (i.e., may not be done while on duty, while in a Federal building or workplace, while using a Government vehicle, or while wearing an official uniform, badge, or insignia identifying DOE). However, employees who are appointed by the President by and with the advice and consent of the Senate are exempted from these four limitations under certain circumstances; nevertheless, these employees should not wear partisan political buttons while performing official duties for the Department.

Under no circumstances should a partisan bumper sticker be placed on a Government vehicle. All employees may have partisan bumper stickers on their own private vehicles while commuting, when the vehicle is parked in a Federal garage or parking space, and when the

vehicle is being used on official business if such use is infrequent or occasional. However, partisan bumper stickers on a private vehicle must be covered while the vehicle is being used on official business (i.e., travel for which the employee may be reimbursed) if such use is frequent or recurrent or while the vehicle is clearly identified as being on official business.

QUESTION: May I have partisan political material displayed in my Federal office?

ANSWER: No. You, or any other DOE employee, may not display in your office or while you are performing official duties any pictures, signs, stickers, or badges associated with a current political campaign or candidate or a political party. There is an exception, which applies to all candidate photographs concerning personal photographs, if all of the following apply: the photograph was on display in advance of the election season; the employee is in the photograph with the candidate; and the photograph is a personal one (i.e., the employee has a personal relationship with the candidate and the photograph is taken at some kind of personal event or function, for example, a wedding, and not at a campaign event or some other type of partisan political event). An employee must not have a political purpose for displaying the photograph, namely, promoting or opposing a political party or a candidate for partisan political office. Also, you may display political memorabilia from past partisan political campaigns that have no effect on a current campaign.

QUESTION: May I serve as an election official?

ANSWER: In any election, including a partisan election, you and any other DOE employee may serve as an election judge, clerk, or other official if those duties are nonpartisan by law. You may (unless you are a career member of the SES) serve as a representative of a political party or candidate at a polling place, including serving as a poll watcher, recorder, or challenger. In so serving, you remain subject to the four limitations described above, including the prohibition against wearing a DOE badge or insignia identifying you as a DOE employee.

QUESTION: How may I participate in the activities of a political party?

ANSWER: You and any other DOE employee may, of course, be a member of a political party (or other political group) and may attend its meetings, rallies, caucuses, or conventions, as an observer. Further, unless you are a career member of the SES, you may also actively participate in the functions of a political party or other political group, including performing the following activities:

- Serving as an officer of or a member of a local, State, or national committee of a political party or club;
- Organizing or reorganizing a political party or club;
- Serving as a delegate, alternate, or proxy to a state or national party convention; or
- Participating fully in and speaking before a nominating caucus, political convention, rally, or other gathering.

However, you should keep in mind that these permitted activities are subject to the four limitations mentioned earlier and the prohibitions against using your influence to affect an election and against soliciting or accepting political contributions.

USING EMAIL AND SOCIAL MEDIA

QUESTION: What is a partisan political email?

ANSWER: A partisan political email is an email you write or receive that is directed toward the success or failure of a political party, candidate for partisan political office or partisan political group. A partisan email may be text, a partisan political cartoon, a newspaper article, or any other manner of communication that carries a partisan political message.

QUESTION: If I receive a partisan political email in my government email account, have I violated the Hatch Act?

ANSWER: No. Simply receiving a partisan political email in your government email account, without more, does not constitute prohibited political activity. However, you must not send or forward that email except you may send that email to your non-government email address (but no one else's address). Simply forwarding such an email to one's personal email account, without more, does not violate the Hatch Act.

QUESTION: If I am on duty or in a government workspace, can I login to my non-government email account and from that account, send or forward a partisan political email?

ANSWER: No. You cannot send a partisan political email from your non-government email address (even using a personal device) while you are on duty (including telecommuting) or in any government workplace or building. Never use your government-owned electronic device to access your non- government email to send or forward partisan political emails.

QUESTION: May I write a letter to the editor or post a comment on a blog endorsing a partisan political candidate?

ANSWER: Yes, if you are not a career member of the SES, you are permitted to express your opinions privately and publicly on political subjects and participate in political activities within the limits described above. If you are a career member of the SES, you may express your opinion privately and publicly on political subjects, including writing a letter to the editor or posting a comment to a blog as long as (i) the activity is not done in concert with a partisan political party, candidate for partisan office or a partisan political group AND (ii) it is not undertaken while on duty, in a Federal building or vehicle, or while wearing indicia of your Federal employment.

Regardless of your appointment type: you may not use your official position or influence to affect the results of an election (including identifying your federal position or office); you must conduct this activity in your personal capacity; and, your comments must not contain a request for political contributions.

QUESTION: If I have listed my official title on my Facebook page, can I fill in the field provided for political views on my Facebook profile?

ANSWER: Yes, you and all other DOE employees may identify the political party that you support on your Facebook profile. Simple identification of the political party, without more, is not political activity.

QUESTION: May I engage in political activity on social media if I am “friends” with or have “followers” who are subordinate employees?

ANSWER: Yes, provided that you, as a supervisor, direct your statements to all of your Facebook "friends" or Twitter “followers,” as opposed to directing your statements to your subordinates or to your subordinates as a subset of your friends (e.g., it is permissible to post your opinion concerning a candidate in your Facebook "status" field). Directing messages to subordinates is viewed as purposefully targeting subordinates with a prohibited message, as opposed to incidental or by-chance communication if it is posted to a much larger universe of individuals. This same answer applies for career SES but with one added restriction. Specifically, career SES are prohibited from taking an active part in partisan political management or partisan political campaigns. Thus, they must not post Facebook links to the website of a political party, partisan political group, or partisan political candidate, because such activity is akin to distributing literature on behalf of those entities or individuals.

QUESTION: May I display campaign logos or candidate photographs as the cover or header photo situated at the top of my social media profile?

ANSWER: Yes; Federal employees may display campaign logos or candidate photos as their cover or header photo on their social media profiles on their personal Facebook or Twitter accounts. This display, usually featured at the top of one’s social media profile, without more, is not improper political activity.

QUESTION: If I change my social media “profile picture” to a candidate’s photograph or campaign logo, would I be prohibited from posting anything during work?

ANSWER: Yes, because a profile picture accompanies most actions on social media, employees would not be permitted, while on duty or in the workplace, to post, “share,” tweet,” or “retweet” any items on Facebook or Twitter, since each such action would show your support for a partisan group or candidate in a partisan race, even if the content of the action is not about those entities.

QUESTION: May I use a social media account in my official capacity to engage in political activity?

ANSWER: No. Any social media account created in your official capacity must be limited to official business matters and remain politically neutral. Any political activity must be confined to your personal social media account, subject to the limitations described in other related questions.

QUESTION: May I become a “friend,” “like,” or “follow” the social media page of a partisan group or candidate in a partisan race?

ANSWER: Yes, but not while on duty or in the workplace.

QUESTION: May I use an alias to “friend,” “like,” or “follow” the social media page of a partisan group or candidate in a partisan race?

ANSWER: Yes, but be advised that federal employees remain subject to the Hatch Act even when they act under an alias.

QUESTION: May I continue to “friend,” “like,” or “follow” an official social media page of a government official after he or she has become a candidate for reelection?

ANSWER: Yes.

QUESTION: What should I do if an individual posts or “tweets” a message soliciting political contributions to a partisan group or candidate in a partisan race, or a link to the political contribution page for such entities, on my personal social media page?

ANSWER: Although the Hatch Act prohibits federal employees from soliciting or receiving political contributions at any time, you are not responsible for the statements of third parties, even when they appear on your social media page. Thus, if an individual posts a link to the political contribution page of a partisan group or candidate in a partisan race, or otherwise solicits political contributions, you need not take any action. The same advice applies to any “tweets” directed at you. However, you must not “like,” “share,” or “retweet” the solicitation, or respond in any way that would tend to encourage other readers to contribute.

EXPRESSING VIEWS AT WORK

QUESTION: May I express views about current events, policy issues, and matters of public interest at work or on duty?

ANSWER: OSC guidance states that all federal employees may discuss current events, policy issues, and matters of public interest at work or on duty, as 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. 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.

For example, while at work employees may express their views about healthcare reform, e.g., “I agree with healthcare reform” would be a permissible statement.

Also, for example, *discussing* the impeachment of a partisan candidate for reelection, without advocating for or against its use against the candidate, is not political activity; while *advocating* for or against the impeachment of a candidate for reelection would be political activity.

Note, however, that the definition of “political activity” is broader than specifically advocating for or against a political party, partisan political group, or candidate for partisan political office. In some cases, depending on the circumstance a discussion that appears to be about current events or policy issues can be political activity. OSC considers all relevant facts and circumstances when determining whether a current events or policy discussion was in fact, political activity.

If you have any questions, Headquarters employees should contact the Office of the Assistant General Counsel for General Law at: (202) 586-1522 or standardsofconduct@hq.doe.gov. NNSA Headquarters employees who are duty-stationed in the National Capital Region should contact the Headquarters NNSA General Counsel's Office at (202) 586-9409 or email NNSAEthicsNCR@nnsa.doe.gov, and NNSA Headquarters employees who are duty-stationed in Albuquerque and all Office of Secure Transportation employees should contract ethics.ABQ@nnsa.doe.gov. Employees who are duty-stationed in the field should contact their local site counsel.