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Hatch Act Advisory for Teleworking Employees

The U.S. Office of Special Counsel (OSC) has received questions about the Hatch Act's application to the unprecedented number of employees who are now teleworking as a result of the COVID-19 pandemic. In response, OSC is issuing this Advisory, which is intended to assist employees in understanding their continuing obligations under the Hatch Act. The Advisory will address the following three areas that are particularly relevant for employees who telework: (1) when employees are considered "on duty;" (2) videoconferencing and other virtual communications; and (3) social media.

1. When Employees are Considered "On Duty"

The Hatch Act prohibits employees from, among other things, engaging in political activity while they are on duty.¹ Political activity is defined as activity directed toward the success or failure of a political party, partisan political group, or candidate for partisan political office.²

Employees are "on duty" for purposes of the Hatch Act when they are: (1) in a pay status other than paid leave, compensatory time off, credit hours, time off as an incentive award, or excused or authorized absence (including leave without pay); or (2) representing any agency in an official capacity.³ Employees maintaining a regular work schedule while teleworking have the same on-duty status as if they were reporting to their regular duty stations. Therefore, they are subject to the Hatch Act's on-duty prohibition during the hours they are working. And unless agency policy says otherwise, employees are not considered on duty, *i.e.*, in a pay status, during their lunch break. For employees who work irregular hours, they are considered on duty any time they are performing official duties.

In sum, it is important for employees to understand that although they are working from home, they are still subject to the Hatch Act's on-duty restrictions. Therefore, employees wishing to engage in political activity by, for example, posting their views about a candidate on social media or making political donations, must ensure that they are not on duty when engaging in such activities.

¹ See 5 U.S.C. § 7324(a).

² 5 C.F.R. § 734.101.

³ *Id.*

2. Videoconferencing and Other Virtual Communications

In order to maintain agency operations and employee engagement many federal employees are now regularly required to participate in videoconferencing, using platforms such as Skype, Teams, or Zoom. Employees participating in virtual work-related conferences are subject to the same on-duty Hatch Act restrictions as when they attend meetings or communicate in-person with others at work. Thus, for example, employees should not wear a campaign t-shirt or hat while participating in a work-related video conference call, and they should ensure that any partisan materials, like campaign signs or candidate pictures, are not visible to others during the call.

In addition, some teleconferencing programs and email applications allow individuals to add a profile picture, which is visible to others. Employees using email or other conferencing programs for work purposes may not use the profile pictures associated with these platforms to show support for or opposition to a political party, partisan political group, or candidate for partisan political office. For example, employees may not use candidate images, campaign slogans, or political party symbols for profile pictures associated with official accounts or when communicating on official matters.

3. Social media

Now, more than ever, people are embracing social media to stay connected to our communities, families, friends, coworkers, and employers. The Hatch Act applies to these social media communications. Employees who use social media are encouraged to review OSC's social media guidance, found [here](#), to understand what activities are prohibited and permitted.

During these difficult times, we are here to assist federal agencies with Hatch Act education resources to help navigate the challenges associated with a presidential election season. If you have questions about this Advisory or the Hatch Act in general, please contact us by phone at (202) 804-7002 or by email at hatchact@osc.gov.