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The Hatch Act and Federal Employees'
Discussions About the Conflict Between Israel and Hamas

The U.S. Office of Special Counsel (OSC) has received numerous questions regarding whether the Hatch Act restricts federal employees from expressing their views about the current conflict between Israel and Hamas and other related topics. OSC is therefore issuing this advisory opinion to inform federal employees of when and how the Hatch Act might apply to such speech. As detailed below, the relevant provision of the Hatch Act prohibits employees from engaging in political activity while on duty or in the federal workplace. Speaking about the ongoing conflict between Israel and Hamas is not political activity unless that speech also suggests domestic electoral action or shows support for, or opposition to, domestic political parties, partisan political groups, or candidates for partisan political office. And even if the speech is political activity, the Hatch Act only prohibits employees from engaging in that speech while on duty or in the federal workplace.¹

The Hatch Act regulations define “political activity” as activity directed toward the success or failure of a political party, partisan political group, or candidate for partisan political office.² The Hatch Act prohibitions apply with respect to domestic political parties, groups, and candidates, and also those in U.S. territories, but not to conduct related to foreign political parties, groups, candidates, or elections.³ The Hatch Act does not prohibit employees from engaging in issue-based advocacy, such as activity in relation to an issue not specifically identified with a political party or partisan political group.⁴

The questions that OSC has received relate to speech expressing support for, or opposition to, individuals and entities involved in the ongoing conflict between Israel and Hamas. This includes expressions related to: the Israeli government; Hamas; the Palestinian Authority; Muslims; Jews; Palestinians; Israelis; and the United States government. Unless the speech is directed at the success or failure of a domestic political party, partisan political group, or candidate for partisan political office, then such speech is not political activity as defined in the Hatch Act regulations. Thus, it is not political activity under the Hatch Act for federal

¹ See 5 U.S.C. § 7324(a)(1)-(2).

² 5 C.F.R. § 734.101.

³ See *generally* 14 U.S. Op. Off. Legal Counsel 7, 9 (1990) (concluding that the Hatch Act does not apply extraterritorially to foreign elections and noting that “Congress’s concern in enacting the Hatch Act was the interaction of federal employees with the domestic political process”).

⁴ See 5 C.F.R. § 734.203.

employees to express support for, or opposition to, the issues underlying the conflict or a cease fire or humanitarian pause. It is similarly not political activity to express support for, or opposition to, foreign political parties or candidates in foreign elections. However, if any such expressions also include statements of support for, or opposition to, domestic political parties, partisan political groups, or candidates for partisan political office, then those expressions are political activity for purposes of the Hatch Act.

For example, it is not political activity for an employee to say, “I support/oppose a cease fire between Israel and Hamas and encourage everyone I know to write their Senators and Representatives to build support for that position.” Similarly, it is not political activity for an employee to say, “I support/oppose the administration’s approach to the conflict between Israel and Hamas.” However, it is political activity for an employee to say, “I support/oppose a cease fire between Israel and Hamas and encourage everyone I know to vote out any Senators or Representatives who disagree,” or “I support/oppose the administration’s approach to the conflict between Israel and Hamas and therefore will vote for/against President Biden in 2024.”

If an employee’s conduct and expressions are issue-based and not political activity, then the Hatch Act does not apply to that conduct and those expressions. If it is political activity, then the Hatch Act prohibits employees from engaging in that activity while on duty or in the federal workplace. Notably, the Hatch Act does not prohibit employees from engaging in political activity while off duty and away from the workplace, provided that employees otherwise comply with the Hatch Act.⁵ The Hatch Act similarly does not prohibit employees from attending or participating in issue-based demonstrations, rallies, or other events.⁶

Finally, in addition to enforcing the Hatch Act, OSC is responsible for investigating alleged prohibited personnel practices (PPPs).⁷ The PPPs include prohibitions against certain discrimination and retaliation in the federal workplace, which could in some circumstances include discrimination or retaliation based on conduct like that described in this advisory opinion. Employees who feel that they have been discriminated or retaliated against, or subjected to any PPP, may file a complaint with OSC at www.osc.gov. However, because OSC does not have authority to issue advisory opinions regarding PPPs, this advisory opinion focuses solely on the Hatch Act implications of employees expressing views about the Israel-Hamas conflict and other related topics.⁸

⁵ For example, employees may not use their official titles or wear official uniforms or insignia while engaging in political activity. See 5 U.S.C. §§ 7323(a)(1), 7324(a)(3). Employees also may not knowingly solicit contributions to a political party, partisan political group, or candidate for partisan political office. See 5 U.S.C. § 7323(a)(2).

⁶ However, if the event is sponsored by a domestic political party, partisan political group, or candidate for partisan political office, then “further restricted employees” may be prohibited from participating. “Further restricted employees” are those who work for an agency, or in a position, listed in 5 U.S.C. § 7323(b)(1)-(2). OSC encourages further restricted employees with questions about participating in such an event to contact OSC for additional advice.

⁷ See 5 U.S.C. §§ 1214(a), 2302(b)(1)-(14).

⁸ See 5 U.S.C. § 1212(f).

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Please note that this opinion addresses only the Hatch Act, and employees should consult with their agency ethics officials about any other laws, rules, or regulations that may apply. OSC encourages employees with questions about whether any particular conduct implicates the Hatch Act to contact the Hatch Act Unit to request an advisory opinion. Employees may do so by email at hatchact@osc.gov or by phone at (202) 804-7002.