



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

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Displaying Photographs of the President During a Reelection Campaign

An employee covered by the Hatch Act may not engage in political activity while on duty, in a government room or building, while wearing an official uniform, or using a government vehicle.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

Thus, the Hatch Act generally prohibits federal employees from, among other things, displaying pictures of candidates for partisan public office in the federal workplace.³ Photographs of an incumbent president, however, raise unique considerations given that the president is the head of the executive branch throughout his or her candidacy for reelection. In recognition of this status, photographs of an incumbent president seeking reelection may be displayed under each of the following two exceptions.⁴

The first exception only applies to official photographs of the president. The Hatch Act generally does not prohibit the display of official photographs of the president in the federal workplace, including both public and employee workspaces. Official photographs include the traditional portrait photograph of the president displayed in federal buildings when obtained from an official source, such as the U.S. Government Publishing Office or the White House (*i.e.*, not clipped from magazines or newspapers). Official photographs also include those photographs that agencies display of the president conducting official business, such as meeting with heads of state.

Official photographs should not be altered in any way, such as by the addition of halos or horns, and must be displayed in a traditional size⁵ and manner (*e.g.*, no life-size cutouts or screensavers). Pictures that are distributed by the president's campaign or a partisan organization, such as the Democratic National Committee or Republican National Committee, are not official, even if they depict the president performing an official act.

¹ 5 U.S.C. § 7324(a).

² 5 C.F.R. § 734.101.

³ *See id.* § 734.306, Ex. 16.

⁴ This advisory is intended to provide employees with general guidance on the Hatch Act's application to displaying photographs of the president in the federal workplace during the president's reelection campaign. The U.S. Office of Special Counsel is authorized to issue advisory opinions pursuant to 5 U.S.C. § 1212(f). Whether any particular display violates the Hatch Act can only be determined after a comprehensive analysis of the attendant facts and circumstances.

⁵ The president's portrait is generally displayed in 8x10 inch or 11x14 inch sizes.

Displaying an official photograph can still lead to a potential Hatch Act violation if the facts and circumstances indicate that the display is directed toward the success or failure of a candidate. For example, an employee may not: display an official photograph containing campaign slogans or materials; display a photograph upside down; or cover an entire office wall with official portraits of the president.

The second exception applies to all candidate photographs and concerns employees' personal photographs. Under this exception, an employee would not be prohibited from having a photograph of any candidate in his or her office if: the employee is in the photograph with the candidate; the photograph was taken at a personal or professional event; and the photograph is not related to the candidate's campaign (*e.g.*, it does not show any campaign slogans or materials, it was not taken at a campaign event, etc.). To illustrate, an employee may display a photograph of the employee's wedding party—even if one of the members is currently a candidate.

As with the official photograph exception, the personal photograph exception does not apply if the facts and circumstances show that displaying the photograph is directed toward the success or failure of a candidate. For example, an employee who formerly worked for a U.S. senator would not be prohibited from displaying a personal photograph of the employee and the senator even during the senator's reelection campaign. But the employee would likely violate the Hatch Act if the employee placed an "I Voted" sticker over the photograph during the senator's reelection campaign.

If you have any questions, please contact our office for additional guidance.