



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

April 25, 2025

Hatch Act Advisory Opinion Rescinding Advisory Opinions Dated May 20 and October 15, 2024

The U.S. Office of Special Counsel (OSC) hereby rescinds the Hatch Act advisory opinion dated May 20, 2024¹ (the “May 20 Advisory”) and a related advisory opinion dated October 15, 2024.² The May 20 Advisory announced three substantive updates to OSC’s Hatch Act enforcement.³ We briefly address each in turn.

First, the May 20 Advisory stated that OSC would pursue disciplinary action for Hatch Act violations by White House commissioned officers before the U.S. Merit Systems Protection Board (MSPB). OSC had previously sought disciplinary action against such employees by submitting a report to the President because of concerns that the MSPB might lack jurisdiction to discipline commissioned officers. Those jurisdictional concerns have not been alleviated. Therefore, OSC will return to its traditional practice of referring Hatch Act violations by White House commissioned officers to the President for appropriate action.

Second, the May 20 Advisory stated that in appropriate cases OSC would seek disciplinary action at the MSPB against a former employee who left federal service before OSC filed a complaint alleging that the former employee violated the Hatch Act. OSC is currently litigating such a case before the MSPB. Until the legal question concerning jurisdiction is resolved to OSC’s satisfaction, OSC will refrain from filing any new complaints against former employees.

Third, the May 20 Advisory created a “year-round workplace political item prohibition” for items related to the campaigns of “current or contemporaneous political figures” (CCPFs). Having seen the policy applied in practice, OSC concludes that the CCPF rule creates too great a burden on First Amendment interests and must therefore be discarded. OSC is therefore returning to its previous advice that the Hatch Act does not prohibit displaying campaign items in the workplace after election day, which was most recently published on November 4, 2020. A copy of that November 4, 2020 advisory opinion is attached.

If you have questions about this advisory opinion, please contact OSC’s Hatch Act Unit at 202-804-7002 or hatchact@osc.gov.

¹ U.S. Off. of Special Couns., Advisory Opinion Issued by The Office of Special Counsel Updating Agency Approach to Enforcement of The Hatch Act as it Relates to Federal Employees (May 20, 2024).

² U.S. Off. of Special Couns., The Hatch Act and Activities after Election Day (Oct. 15, 2024).

³ The May 20 Advisory also included a statement about when employee speech in the workplace might violate the Hatch Act. That statement is also rescinded because, instead of providing clarification on the issue, it created confusion. Information about the Hatch Act implications of speech in the workplace is available on OSC’s website.

ATTACHMENT



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

November 4, 2020

The Hatch Act and Activities after Election Day

Each presidential election year, the U.S. Office of Special Counsel (OSC) receives questions from federal employees about permissible and prohibited activities after Election Day. This advisory opinion addresses common questions about wearing or displaying campaign items in the workplace after Election Day and participating in certain post-Election Day activities. 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.

Wearing or Displaying Items about Presidential Candidates

With a few exceptions, after Election Day the Hatch Act does not prohibit employees from wearing campaign items, like t-shirts or hats, and displaying candidate photographs while they are on duty, in the federal workplace, wearing an official uniform or insignia, or using a government vehicle.

This activity primarily implicates the Hatch Act's prohibition against engaging in political activity while on duty, in a government room or building, wearing an official uniform or insignia, 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

For purposes of the Hatch Act, an individual is no longer considered a candidate when the outcome of the election is determined by vote of the Electoral College on the sixth day of January after the election.³ But while presidential candidates may retain their status as candidates well past Election Day, OSC has consistently advised that, with rare exception,⁴ post-Election Day activities showing support for or opposition to a presidential candidate will not affect the result of the election for that office. Therefore, wearing campaign items, like t-shirts or hats, and displaying candidate photographs in the workplace after Election Day no longer constitute political activity for purposes of the Hatch Act. Similarly, expressing views about the election results or the presidential candidates is no longer considered political activity.⁵ As a

¹ 5 U.S.C. § 7324(a).

² 5 C.F.R. § 734.101.

³ See U.S. Const. art. II, § 1; *id.* amend. XII; 3 U.S.C. § 15.

⁴ Such exceptions include, but are not limited to, influencing or attempting to influence the results of the popular election, such as through a recount effort, and swaying or attempting to sway the allocation of electoral votes.

⁵ For the same reason, use or display of "#resist" or "the Resistance," or advocating or opposing impeachment of the president, while on duty or in the workplace (as discussed in OSC's November 27, 2018 advisory and November 30,

result, the Hatch Act does not prohibit employees from engaging in such activity after the election while they are on duty, in the federal workplace, wearing an official uniform or insignia, or using a government vehicle.⁶

Wearing or Displaying Items about Political Parties or Partisan Political Groups

After Election Day, the Hatch Act continues to prohibit employees from engaging in activity that shows support for or opposition to political parties or partisan political groups while they are on duty, in a government room or building, wearing an official uniform or insignia, or using a government vehicle. As explained above, political activity is not limited to candidates but also includes activity related to political parties and partisan political groups. But unlike candidacies that, with rare exception, cease to exist after an election, political parties and partisan political groups do not similarly disappear. Thus, activity directed at the success or failure of political parties or partisan political groups is prohibited by the Hatch Act even after Election Day. Examples of activities that could violate this prohibition include wearing or displaying political party items, forwarding emails from a political party, texting about a partisan political group event, or sharing a post from a political party on social media while on duty, in a government room or building, wearing an official uniform or insignia, or using a government vehicle.

Participating in Other Post-Election Day Activities Concerning the Election

The Hatch Act prohibits all federal employees from using their official authority or influence or agency resources for the purpose of interfering with or affecting the result of an election.⁷ Accordingly, after Election Day, the Hatch Act continues to prohibit employees from using their official authority or agency resources to affect the outcome of the presidential election.

In addition, unlike wearing a campaign button or hat, engaging in certain post-Election Day activity on behalf of a political party, partisan political group, or candidate for partisan political office is still political activity because it has the potential to affect the outcome of the election. Examples of such activity include taking part in legal challenges, a recount, or other ballot-related efforts, or attempting to influence electors' votes. As explained below, whether an employee may participate in these activities depends on an employee's status under the Hatch Act.⁸

2018 clarification, available at <https://tinyurl.com/yxeny8c>, is no longer political activity under the Hatch Act after Election Day.

⁶ However, should any former presidential candidates announce their candidacy for future election, displaying or wearing items that show support for or opposition to that candidate will again be prohibited by the Hatch Act.

⁷ See 5 U.S.C. § 7323(a)(1).

⁸ See OSC's website, <https://osc.gov/Services/Pages/HatchAct-Federal.aspx>, for a description of which employees are "less restricted" and which are "further restricted."

“Less Restricted” Employees

Employees who are considered “less restricted” under the Hatch Act are permitted to take an active part in partisan political management and campaigning, which can include taking part in a wide variety of activities on behalf of a candidate or political party. Thus, the Hatch Act does not prohibit “less restricted” employees from engaging in the abovementioned post-Election Day activities on behalf of a political party, partisan political group, or candidate for partisan political office. However, “less restricted” employees may not perform any tasks related to these activities while they are on duty, in the federal workplace, wearing an official uniform or insignia, or using a government vehicle. In addition, employees may not solicit political contributions to support these efforts.⁹

“Further Restricted” Employees

Employees in certain agencies and positions are considered “further restricted” under the Hatch Act and are prohibited from actively participating in partisan political management and campaigning, even while they are off duty and away from the federal workplace.¹⁰ Therefore, at all times, the Hatch Act prohibits “further restricted” employees from engaging in post-Election Day activities with the potential to affect the outcome of an election, such as legal challenges or recount efforts, if these activities are done on behalf of a political party, partisan political group, or candidate for partisan political office.

⁹ Although “less restricted” employees may engage in these activities while off duty and away from work, they remain subject to all other Hatch Act prohibitions, including the prohibition against soliciting, accepting, or receiving political contributions. See 5 U.S.C. § 7323(a).

¹⁰ See 5 U.S.C. § 7323(b)(2); 5 C.F.R. § 734.401(a).