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The Hatch Act Modernization Act of 2012-Salary Defined

Recently, Congress amended the Hatch Act by narrowing the group of state and local employees who are prohibited from being candidates for public office in partisan elections. See Hatch Act Modernization Act of 2012, Pub. L. No. 112-230, § 2, 126 Stat. 1616, 1616 (amending 5 U.S.C. § 1502(a)(3)). Now, only those state and local employees whose salaries are paid entirely with federal loans or grants are prohibited from being candidates for partisan public office. Id.

While the amended Act now states that a state or local employee may not be a candidate for partisan public office “if the salary of the employee is paid completely” by federal funds, it does not provide a definition for “salary.” Id. Consequently, OSC has received several questions concerning what constitutes an employee’s salary and whether it includes additional compensation, such as overtime or health insurance. Thus, OSC looked to other legal sources to give meaning to the undefined term.

A general rule of statutory construction is that undefined terms are interpreted in their “ordinary, contemporary, common meaning.” Rusin v. Dep’t of the Treasury, 92 M.S.P.R. 298, 306 (2002) (quoting Perrin v. United States, 444 U.S. 37, 42 (1979)). Black’s Law Dictionary defines “salary” as a fixed amount earned for performing a job. See Black’s Law Dictionary 1364 (8th ed. 2004). Further, “[salary] is paid at regular intervals on a yearly basis...and [is] usually exempt from overtime and the like.” Id. In contrast, compensation is defined generally as “[r]emuneration and other benefits received in return for services rendered...compensation includes wages, stock option plans, profit-sharing, commissions, bonuses, golden parachutes, sick pay, medical benefits, disability, leaves of absence, and expenses reimbursement.” Id. at 301 (quoting Kurt H. Decker & H. Thomas Felix II, *Drafting and Revising Employment Contracts* § 3.17, 68 (1991)). Thus, the legal definition of “salary” precludes, for example, overtime and health insurance.

A definition of salary that does not include supplemental benefits is further supported by case law discussing both salary and additional forms of compensation. For example, salary is basic pay for a position, and it excludes additional compensation of any kind. See e.g., Famulari v. Office of Pers. Mgmt., 13 M.S.P.R. 624, 628 (1982). See also Special Counsel v. Malone, 84 M.S.P.R. 342, 352 (1999) and Matturi v. U.S. Civil Serv. Comm’n, 130 F. Supp. 15, 16 (1955), aff’d, 229 F.2d 435 (1956) (referring to salary and compensation as separate forms of remuneration in analyses relating to Hatch Act violations). Further, compensation has been defined as “those amounts by which an employee’s pay is regularly augmented.” McLaughlin v. U.S. Postal Service, 55 M.S.P.R. 192, 198 (1992). Examples of compensation that are separate from salary include paid leave, holiday pay, overtime, and benefits. See e.g., Id. at 198 (concluding that compensation includes overtime pay); Thiess v.

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Witt, 100 F.3d 915, 918 (Fed. Cir. 1996) (concluding that compensation includes leave and holiday pay); and Moran v. Department of Defense, 90 M.S.P.R. 197, 204 (2001) (quoting Marsa v. Potter, 2001 WL 885312*3 (2001)) (listing bonuses, fringe benefits, pension, health insurance, annual leave, sick leave, overtime and premium pay, and retirement contributions as forms of compensation). Accordingly, “compensation” is much broader than “salary,” and the terms are not synonymous. See also Thiess 100 F.3d at 915.

Based on the above information, only an employee’s salary, the basic pay received for job performance, should be considered in determining whether a state or local employee is covered by the Hatch Act’s candidacy restriction. To be clear, the source of funding for compensation such as overtime, health and retirement, and holiday pay¹ is irrelevant to this determination. For example, if a state or local employee’s salary is entirely federally funded but his benefits are state funded, he is subject to the Act’s candidacy prohibition. Conversely, if a state or local employee’s salary is not entirely federally funded but his benefits are federally funded, he is not subject to the Act’s candidacy prohibition.

If you have questions about the Hatch Act or the Hatch Act Modernization Act, please call (800) 85-HATCH or (800) 854-2824, or write to hatchact@osc.gov.

¹ Please note, that the foregoing list is illustrative only and is not an exhaustive list of compensation.