

Interim Policy on the Hatch Act

Reference:

Workforce Innovation and Opportunity Act; Hatch Act; Hatch Act Modernization Act of 2012; and TEGL 35-10.

Background:

Providing responsible stewardship for and oversight of public funding for federally-funded workforce programs must be accomplished in a way that demonstrates strong integrity, accountability, and transparency in order to preserve the public trust. The responsibility for this stewardship and oversight is shared in the public workforce system by federal, state and local entities. Workforce programs are largely governed under the Workforce Innovation and Opportunity Act (WIOA) by state and local Workforce Development Boards (WDBs). The WDBs are responsible for multiple functions, including procurement decisions. Local WDBs select One-Stop Career Center operators and youth service providers, and develop a budget for carrying out the duties of the local WDB. These decisions often have significant implications for service providers and participants they serve, and thus must be made in a transparent and ethical manner. In 1939, Congress approved legislation known as the Hatch Act which limits the political activities of federal employees, employees of the District of Columbia government, and certain state and local government employees. Members of state and local WDBs should be aware of the federal, state and local laws and regulations which guide their conduct while serving on the WDB. On December 19, 2012, Congress passed the Hatch Act Modernization Act of 2012, which updated the language of the Hatch Act.

Action:

After a 10 day review period, this Policy will be considered final. Questions and comments should be submitted in writing to the WIOA Policy Mailbox, ndol.wioa_policy@nebraska.gov.

Policy:

For individuals paid with federal funds, the Hatch Act restricts the political activity of individuals principally employed by state or local executive agencies and who work in connection with programs financed in whole or in part by federal loans or grants. Covered state and local employees may not, among other things, use their official authority or influence to interfere with or affect the results of an election or nomination; or directly or indirectly coerce, attempt to coerce, command, or advise a state or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes.

The Hatch Act provides the following definitions:

- “State” means a state or territory or possession of the United States.
- “State or local agency” means the executive branch of a state, municipality, or other political subdivision of a state, or an agency or department thereof, or the executive branch of the District of Columbia, or an agency or department thereof. [Earlier decisions have determined local boards meet this definition.]
- “Federal agency” means an executive agency or other agency of the United States, but does not include a member bank of the Federal Reserve System.
- “State or local officer or employee” means an individual employed by a state or local agency whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a federal agency, but does not include:
 - An individual who exercises no functions in connection with that activity; or
 - An individual employed by an educational or research institution, establishment agency, or system which is supported in whole or in part by a state or political subdivision thereof, the District of Columbia, or a recognized religious, philanthropic, or cultural organization.¹

The Hatch Act clarifies that a state or local officer or employee retains the right to vote as he chooses and to express his opinions on political subjects and candidates.² However, with few exceptions, a state or local officer or employee may not be a candidate for partisan elective office if the salary of the employee is paid completely, directly or indirectly, by loans or grants made by the United States or a Federal agency.³ This restriction does not apply to the Governor or Lieutenant Governor of a state or an individual authorized by law to act as Governor; the mayor of a city; a duly elected head of an executive department of a state, municipality, or the District of Columbia who is not classified under a state, municipal, or the District of Columbia merit or civil service system; or an individual holding elective office.⁴

When a federal agency charged with the duty of making a loan or grant of United States funds for use in an activity by a state or local officer or employee has reason to believe that the officer or employee has violated the Hatch Act, it shall report the matter to the U.S. Office of Special Counsel. On receipt of the report or on receipt of other information which seems to the Special Counsel to warrant an investigation, the Special Counsel shall investigate the report and such other information and present findings and any charges based on such findings to the Merit Systems Protection Board, which shall: fix a time and place for a hearing; and send, by registered or certified mail, to the officer or employee charged with the violation and to the state or local agency employing him a notice setting forth a summary of the alleged violation and giving the time and place of the hearing.⁵

¹ 5 U.S.C. § 1501

² 5 U.S.C. § 1502(b)

³ 5 U.S.C. § 1502(a)

⁴ 5 U.S.C. § 1502(c)

⁵ 5 U.S.C. § 1504

Examples of Permitted Activities

State and local employees may, so long as they are acting in a personal capacity (i.e., not an official capacity) engage in the following activities:

- register and vote as they choose
- assist in voter registration drives
- express opinions about candidates and issues
- contribute money to political organizations
- attend political fundraising functions
- attend and be active at political rallies and meetings
- join and be active members of a political party or club
- sign and circulate nominating petitions
- campaign for or against referendum questions, constitutional amendments and/or municipal ordinances
- campaign for or against candidates in partisan elections
- make campaign speeches for candidates in partisan elections
- distribute campaign literature in partisan elections
- campaign for and hold office in political clubs or parties
- volunteer to work on a partisan political campaign
- participate in any activity not specifically prohibited by law or regulation.⁶

Prohibited Activities

Covered state, District of Columbia, and local employees ***may not***:

- be candidates for public office in a partisan election; *
- use official authority or influence to interfere with or affect the results of an election or nomination; or
- directly or indirectly coerce, attempt to coerce, command, or advise a state or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes.

State, District of Columbia, and local employees subject to the Hatch Act should note that an election is partisan if any candidate is to be nominated or elected as representing a political party, for example, the Democratic or Republican Party.⁷

General Points

An employee's conduct is also subject to the laws of the state and the regulations of the employing agency. Prohibitions of the Hatch Act are not affected by state or local laws.

⁶ State and Local Employees – Examples of Permitted Activities, Information on Hatch Act, US Office of Special Counsel, March 10, 2014

⁷ State, DC and Local Employees – Examples of Prohibited Activities, Information on Hatch Act, US Office of Special Counsel, March 10, 2014

For answers to specific questions, call the Office of Special Counsel at 800-85-HATCH (854-2824) or 202-254-3650. Requests for written advisories may be made to the:

U.S. Office of Special Counsel
1730 M Street, NW Suite 218
Washington, DC 20036
E-mail: hatchact@osc.gov
Homepage: <http://www.osc.gov>

Disclaimer:

This policy is based on NDOL's reading of the statute along with the Notice of Proposed Rulemaking released by USDOL. This policy may be subject to change as additional federal regulations and TEGLs are released. This policy is not intended to be permanent and should be viewed as a placeholder until final federal regulations are released in early 2016.