

HATCH ACT INFORMATION (REGARDING POLITICAL ACTIVITIES)



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Hatch Act

- ▶ Effective January 28, 2013, the federal law (“federal Hatch Act”) was amended substantially, reducing the application and impact of the federal Hatch Act on District government employees.
 - Public Law No. 112–230, “Hatch Act Modernization Act of 2012.”
- ▶ On February 19, 2013, the D.C. Council enacted an amendment to the 2010 “Local Hatch Act,” which became effective on March 7, 2013. The Local Hatch Act now governs the political activities of D.C. government employees.
 - “Prohibition on Government Employee Engagement in Political Activity Act of 2010”, effective March 31, 2011 (D.C. Law 18–335; 58 DCR 599), as amended by the “Prohibition on Government Employee Engagement in Political Activity Amendment Act of 2013” (D.C. Law 20–4, effective May 18, 2013) (the “Local Hatch Act”).

Local Hatch Act

- ▶ The Local Hatch Act became effective on March 7, 2013 and came under BEGA's jurisdiction.
- ▶ The Local Hatch Act establishes restrictions on the *political activity* of D.C. government *employees* similar to those previously provided by the federal Hatch Act.

Definition of “Employee”

- ▶ The Local Hatch Act defines a D.C. government “employee” as:
 - any individual paid by the D.C. government from grant or appropriated funds for his or her services or holding office in D.C.;
 - a member of a board or commission who is nominated for a position pursuant to § 2(e) of the Confirmation Act of 1978; (D.C. Official Code § 1-523.01(2)(e))
 - a member of a board or commission who is nominated pursuant to § 2(f) of the Confirmation Act of 1978 when the member is engaged in political activity that relates to the subject matter that the member’s board or commission regulates. (D.C. Official Code § 1-523.01(2)(f))
- D.C. Official Code § 1-1171.01(3)

Not an “Employee”

- ▶ If not otherwise employed by the District, the Local Hatch Act does not include the following as D.C. government employees:
 - Employees of the courts of the District of Columbia;
 - The Mayor;
 - The members of the Council;
 - Advisory Neighborhood Commissioners;
 - Members of the State Board of Education;
 - Members of the District of Columbia Statehood Delegation; and
 - The Attorney General (after it becomes an elected office);
- D.C. Official Code § 1-1171.01(3)(A)

Definition of “Political Activity”

- ▶ The Local Hatch Act defines “political activity” as:
 - Any activity that is *regulated by the District* and directed toward the success or failure of a political party, candidate for partisan political office, partisan political group, ballot initiative, or referendum.
 - D.C. Official Code § 1-1171.01(8)(A)

Political Activity that is “Regulated by the District”

“Regulated by the District” =

- ▶ any election, ballot initiative, or referendum that is regulated by the District of Columbia Board of Elections.

“Political Activity” Prohibitions

- ▶ When engaging in “political activity” that is **regulated by the District, D.C.** government employees cannot:
 - Knowingly solicit, accept, or receive a political contribution from any person (*except* if the employee has filed as a candidate for political office);
 - File as a candidate for election to a *partisan* political office.
 - Knowingly direct, or authorize anyone else to direct, that any subordinate employee participate in an election campaign or request a subordinate to make a political contribution.
- ▶ When engaging in **ANY** “political activity,” D.C. government employees cannot:
 - Use their official authority or influence for the purpose of interfering with or affecting the result of an election;

EXPLORATORY COMMITTEES

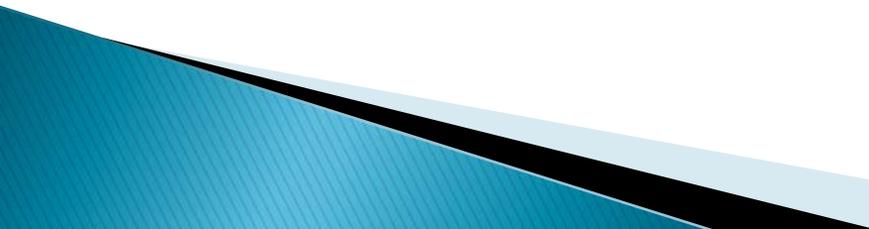
Testing the Waters of Candidacy

- ▶ Can a District employee form an **Exploratory Committee** before becoming a candidate?
- ▶ The answer is: YES. Theoretically, for purposes of the Ethics Act and the LHA, it is permissible for a government employee to **HAVE** an Exploratory Committee without being deemed a Candidate.
- ▶ **BUT**
- ▶ The Employee should not **CREATE** the Exploratory Committee because of the risk that the employee will be deemed a candidate if any fundraising occurs.
- ▶ Important distinction because becoming a Candidate for purposes of the LHA leads to the employee being required to resign his/her government position.
- ▶ Thus, no Exploratory Committee *formed by an employee* may engage in fundraising. An Exploratory Committee formed by an individual or a group other than the employee, acting on behalf of the employee, may engage in fundraising as long as the District government employee for whom the Exploratory Committee has been formed:
 - Does not engage in fundraising for the Exploratory Committee;
 - Does not receive contributions or make expenditures regarding the Exploratory Committee; and
 - Does not coordinate or otherwise consent to another person receiving contributions or making expenditures regarding the Exploratory Committee.
- ▶ **REMEMBER THE RISK:**
- ▶ **DISTRICT EMPLOYEES MAY NOT ENGAGE IN FUNDRAISING FOR A PARTISAN DISTRICT REGULATED ELECTION.**
- ▶ – **IMPORTANT NOTE:** If your position is paid in whole or in part by federal funds, be advised that you are also subject to the federal Hatch Act which **DOES NOT** allow for an exploratory committee.

Definition of “Partisan Political Office”

- ▶ The Local Hatch Act defines “partisan political office” as:
 - *Any office in the District government for which any candidate is nominated or elected as representing a party, any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected, but shall exclude an office or position within a political party or affiliated organization.*

Partisan Political Office

- ▶ Any office in the District Government for which any candidate is nominated or elected as representing a party.
 - ▶ Parties whose candidates received votes in the last/preceding Presidential election (2012)
 - 1. Democrat
 - 2. Republican
 - 3. Libertarian
 - 4. Statehood Green
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“Political Activity” that is *not* regulated by the District

- ▶ When engaging in “political activity” that is *not* regulated by the District:
 - A D.C. government employee who *is not* a District resident may file as a candidate to a partisan political office in their own local, non-District elections without restriction by the Local Hatch Act.
 - A D.C. government employee engaged in political activity that is *not* regulated by the District is permitted to solicit, accept, or receive political contributions from any person.
 - D.C. Official Code § 1-1171.02

Fundraising as “Political Activity”

- ▶ The Local Hatch Act permits D.C. government employees to take an active part in political management or in political campaigns.
 - This means that, if you are D.C. government employee:
 - you can work on and manage the District-regulated partisan or non-partisan political campaign of another;
 - you can work on, manage, and fund-raise for your own District regulated non-partisan campaign;
 - you can work on, manage, and fund-raise for a non-District regulated campaign of another or yourself, regardless of whether it is a partisan or non-partisan campaign.
 - **AND**
 - you **CAN** fund-raise for the District-regulated campaign of another if it is a non-partisan campaign.

“Meet and Greet” Events

- ▶ A “Meet & Greet” event is an event where attendees can meet and greet a candidate.
- ▶ Organizing a “Meet and Greet” event is a permissible “Political Activity” because the Local Hatch Act permits District employees to take an active part in political management & campaigns.
 - BUT -
- ▶ District employees are **prohibited** from fundraising for the District regulated campaign of another person.
 - THEREFORE -
- ▶ If the Meet & Greet is for fundraising purposes, District employees are prohibited from taking an active part in the event (other than attending).
- ▶ If the Meet & Greet has a cost to attend, District employees are prohibited from taking an active part in the event (other than attending) because the cost to attend the event (which is being held to promote a candidate) constitutes fundraising.
 - The purpose of the event is to promote a candidate. Contributions made to cover the costs of the event constitute political contributions. Therefore, if the Meet & Greet event has a cost, it is a fundraising event and District employees are prohibited from taking an active part in the event, other than attending.

Non-Partisan Political Office

- ▶ D.C. government employees who *are* District residents may file as candidates for *non-partisan* District office.
 - D.C. Official Code § 1-1171.02
- ▶ D.C. government employees who *are not* District residents may participate in their local, non-District elections *without restriction* by the Local Hatch Act.

Permitted “Political Activity” for Designated Employees of the Mayor or Council

- ▶ The Mayor and each member of the Council may designate *one* D.C. government employee *while on leave* to knowingly solicit, accept, or receive political contributions.
- ▶ The designated D.C. government employee may not perform this function while on duty or in any room or building occupied in the discharge of official duties in the District government, including any agency or instrumentality thereof.

Prohibited “Political Activity” for *ALL* D.C. government employees

- ▶ *ALL* D.C. government employees are prohibited from engaging in *ALL* political activity, regardless of whether it is regulated by the District, while:
 - On duty;
 - In any room or building occupied in the discharge of official duties in the D.C. government, including any agency or instrumentality thereof;
 - Wearing a uniform or official insignia identifying the office or position of the employee;
 - Using any vehicle owned or leased by the District, including an agency or instrumentality thereof.
 - D.C. Official Code § 1-1171.03(a)

- ▶ In addition, a D.C. government employee may not coerce, explicitly or implicitly, any subordinate employee to engage in political activity.
 - D.C. Official Code § 1-1171.03(b)

- or

- ▶ Use their official authority or influence for the purpose of interfering with or affecting the result of an election;
 - D.C. Official Code § 1-1171.02(a)(1)

On Duty/In the Workplace Prohibition

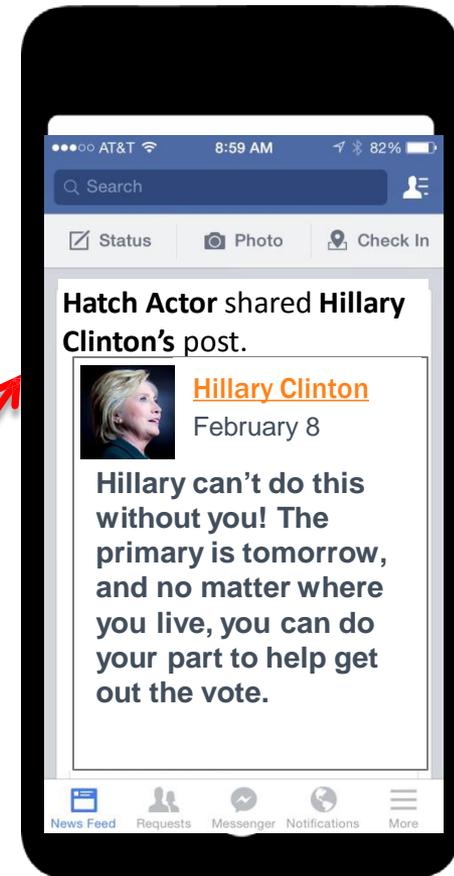
- ▶ Employees may not engage in political activity while
 - On duty
 - Including when telecommuting or on official time for union duties
 - In a government room or building
 - Including break rooms, conference rooms, and union offices, if inside a federal building
 - Wearing an official uniform or insignia
 - Using a government vehicle
- Political Activity is any activity directed toward the success or failure of a partisan candidate, political party, or partisan political group.



May I use a smartphone or other personal device to post or share political content on Facebook or Twitter while I am on duty or in the workplace?



You log on to your Twitter or Facebook app on your smartphone and post political comments, or share, like, or retweet political content posted by others.



NO. This is NOT OKAY. You may not engage in political activity via social media at any time when you are on duty or in the workplace, regardless of the method used to access your social media sites.

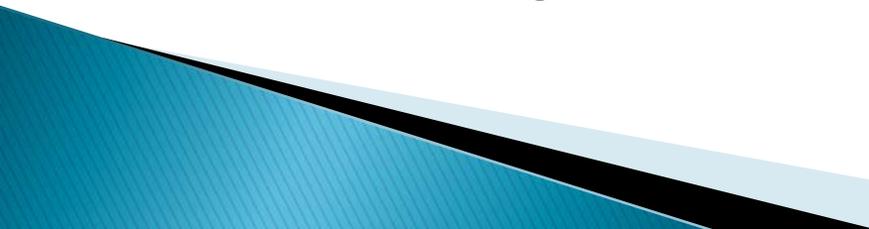
Apply Your Knowledge

- ▶ Question: I am a District government employee paid entirely with District funds. I reside in the District, but my childhood friend is running for office in Maryland, on a partisan ticket. Am I permitted to *campaign* for my friend.
- ▶ Answer: Yes
- ▶ Question: Am I permitted to *solicit campaign funds* for my friend's campaign?
- ▶ Answer: Yes

Apply Your Knowledge

- ▶ Question: I received an email from a partisan political candidate in my District government email inbox. Have I violated the Local Hatch Act?
- ▶ Answer: No, you (unfortunately 😊) don't control what comes into your email.
- ▶ Question: I forwarded the email to my coworkers. Have I now violated the Local Hatch Act?
- ▶ Answer: Yes, you do control what goes out of your email.

Apply Your Knowledge

- ▶ Question: I am a District government employee and my spouse is running for elected office in the District. Can I fund raise for my spouse's campaign?
 - ▶ Answer: No, there is no spousal exception for fundraising for a District regulated election.
 - ▶ Question: I run into someone in the grocery store who wants to give me a check for my spouse's campaign. Can I pass the check along to my spouse?
 - ▶ Answer: No, this constitutes taking part in fundraising for a District regulated election.
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Apply Your Knowledge

- ▶ Question: My agency has space in our building that we allow public groups to use. Are political groups prohibited from using that space?
 - ▶ Answer: No.
 - ▶ Question: Do political groups have to follow and be subject to the same protocols for reserving and using the space as any other public group?
 - ▶ Answer: Yes.
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Apply Your Knowledge

- ▶ Question: Can I wear a partisan political button or t-shirt while I am in my District government office?
 - ▶ Answer: No, that's prohibited political activity.
 - ▶ Question: Can I wear a partisan political button or t-shirt while I am in a District government office or building that I don't work in?
 - ▶ Answer: No, the prohibition covers all District government buildings.
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The federal Hatch Act

- ▶ Although all D.C. government employees are now covered by the Local Hatch Act, those employees whose salaries are paid *in whole or in part* with federal funds (“covered District employees”) are also covered by specific provisions in the federal Hatch Act.
- ▶ Your agency head is required to inform you if you are a covered District employee.
- ▶ Covered District employees must comply with the federal Hatch Act, the Local Hatch Act, and the Ethics Act.
 - 5 U.S.C. § 1501(4) (defining who is covered).

Covered District Employees

- ▶ A covered District employee whose salary is paid *in whole* with federal funds may not:
 - ▶ Be a candidate for elective office.
 - ▶ 5 U.S.C. § 1502.

Covered District Employees

- ▶ A covered District employee whose salary is paid *in part* with federal funds may:
 - Be a candidate for elective office, if not otherwise prohibited by the Local Hatch Act.

Enforcement of the federal Hatch Act

- ▶ The federal Hatch Act is enforced by a federal agency: the U.S. Office of Special Counsel (OSC).
- ▶ OSC initiates investigations and, if the allegation has merit, can bring an enforcement action with the U. S. Merit Systems Protection Board (MSPB).
 - 5 USC § 1504.
- ▶ This enforcement action may lead to an employee being terminated and/or the imposition of fines.
 - 5 USC § 1505.
- ▶ A violation of the federal Hatch Act also may be a violation of the District's personnel laws and regulations as well as the District's Code of Conduct.

Questions about the federal Hatch Act?

- ▶ If you have questions about the federal Hatch Act specifically, you may contact the Hatch Act Unit of the federal government's Office of Special Counsel (OSC). Inquiries about the federal Hatch Act may be made in writing or by telephone to:

Hatch Act Unit

U.S. Office of Special Counsel

1730 M Street, N.W., Suite 218

Washington, D.C. 20036-4505

Tel: (800) 85-HATCH or (800) 854-2824

(202) 254-3650

Fax: (202) 254-3700

Requests for federal Hatch Act advisory opinions (only) may be made by e-mail to: hatchact@osc.gov

Prohibited “Political Activity” for *ALL* D.C. government employees

- ▶ *ALL* D.C. government employees are prohibited from engaging in *ALL* political activity, regardless of whether it is regulated by the District, while:
 - On duty;
 - In any room or building occupied in the discharge of official duties in the D.C. government, including any agency or instrumentality thereof;
 - Wearing a uniform or official insignia identifying the office or position of the employee;
 - Using any vehicle owned or leased by the District, including an agency or instrumentality thereof.
 - D.C. Official Code § 1-1171.03(a)

- ▶ In addition, a D.C. government employee may not coerce, explicitly or implicitly, any subordinate employee to engage in political activity.
 - D.C. Official Code § 1-1171.03(b)

- or

- ▶ Use their official authority or influence for the purpose of interfering with or affecting the result of an election;
 - D.C. Official Code § 1-1171.02(a)(1)

Permitted and Prohibited Political Activities for D.C. government employees

May Not

May

<ul style="list-style-type: none"> ❖ MAY NOT use your official authority or influence for the purpose of interfering with or affecting the result of an election. 	<ul style="list-style-type: none"> ❖ MAY take an active part in political management or in political campaigns, including working on or managing a campaign.
<ul style="list-style-type: none"> ❖ MAY NOT knowingly solicit, accept, or receive a political contribution from any person for a District regulated election. (<i>except</i> if the employee filed as a candidate) 	<ul style="list-style-type: none"> ❖ MAY contribute money to political campaigns, political parties, or partisan political groups. ❖ MAY attend and be active at political rallies and meetings.
<ul style="list-style-type: none"> ❖ MAY NOT file as a candidate for election to a <i>partisan</i> political office in a District regulated election. 	<ul style="list-style-type: none"> ❖ MAY file as a candidate for election to a <i>non-partisan</i> political office in a District regulated election.
<ul style="list-style-type: none"> ❖ MAY NOT coerce, explicitly or implicitly, any subordinate employee to engage in political activity. 	<ul style="list-style-type: none"> ❖ MAY register and vote as you choose. ❖ MAY assist in voter registration drives. ❖ MAY attend and be active at political rallies and meetings.
<ul style="list-style-type: none"> ❖ MAY NOT engage in political activity while – ❖ on duty ❖ in any room or building occupied in the discharge of official duties of the District government, including an agency or instrumentality ❖ wearing a uniform or official insignia identifying the office or position of the employee ❖ using any vehicle owned or leased by the District. 	<ul style="list-style-type: none"> ❖ MAY join and be an active member of political clubs or parties. ❖ MAY hold office in political clubs or parties. ❖ MAY express opinions about candidates and issues. If the expression is political activity, however, then the expression is not permitted while on duty, in a District government building, while wearing uniform or insignia, or while using any District vehicle.

Questions about the Local Hatch Act?

- ▶ If you have questions about the Local Hatch Act, you may contact BEGA.
- ▶ Inquiries may be made by telephone or by email to:

Phone: (202) 481-3411

Email: bega@dc.gov

