

Social Media & the Federal Workplace

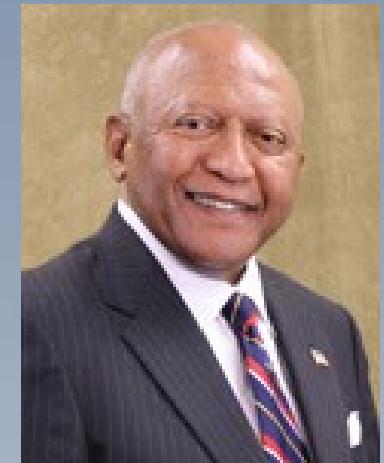
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Civil Rights Laws

- Enforced by the Equal Employment Opportunity Commission (EEOC), which protect employees and applicants from discrimination because of the following protected classes:
 - Race/color
 - Gender
 - Disability
 - Pregnancy
 - Age
 - National origin
 - Genetic information

What is Social Media

- Social media is an umbrella term that defines the various activities which integrates technology, social interaction, and the construction of words, pictures, video and audio.
- Social media uses technology to connect people.

Types of Social Media

- **Social Bookmarking:** ([Del.icio.us](#), Blinklist, Simpy) Interact by tagging websites and searching through websites bookmarked by other people.
- **Social News:** (Digg, Propeller, Reddit) Interact by voting for articles and commenting on them.
- **Social Networking:** (Facebook, Twitter) Interact by adding friends, commenting on profiles, joining groups and having discussions.
- **Social Photo and Video Sharing:** (Instagram, Pinterest, YouTube, Flickr, Tumbler) Interact by sharing photos or videos.

Social Media & the Federal Workplace

- **Facebook:** is the world's most popular social networking website. It makes it easy for you to connect and share with your family and friends online.
- **Twitter:** is an online social networking and microblogging service which enables users to send and read "tweets", are text messages limited to 140 characters.
 - In violation of the Hatch Act, a federal employee posted dozens of tweets about partisan elections and candidates while on duty.
 - In its investigation of the matter, the Office of Special Counsel (OSC) confirmed the employee knew of the Hatch Act restrictions on political activity. Nonetheless, the employee posted over 30 tweets, many of them soliciting contributions, another Hatch Act violation.
 - OSC intended to pursue prosecution but closed the case when the employee resigned.
- **Instagram:** is an online photo-sharing, video-sharing and social networking service which enables its users to take pictures and videos, apply digital filters to them, and share them on a variety of social networking services, such as Facebook, Twitter, Tumblr, etc.

Social Media & the Federal Workplace (continued)

- **LinkedIn:** is a social networking website for people in professional occupations.
- **Pinterest:** is a pinboard-style photo-sharing website that allows users to create and manage theme-based image collections such as events, interests, and hobbies. Users can browse other pinboards for images, "re-pin" images to their own pinboards, or "like" photos.
- **Tumblr:** is a microblogging platform and social networking website founded by David Karp and owned by Yahoo! Inc. The service allows users to post multimedia and other content to a short-form blog.
- **Google and other search databases:** popular search engine that can disclose political affiliation if persons have contributed to a political campaign, pictures, affiliations, etc. Google images can also show pictures of person which would disclose their protected status.

Dos and Don'ts for Federal Employees and Social Media

- Don't use your government email account to link to social sites.
- Don't identify your agency/employer on a controversial social media feed/posts.
- Don't allow others to "tag" you in compromising pictures or material that can be attributed to your Agency.
- Be mindful of any posts that may shed negative light on the Agency.

Dos and Don'ts for Federal Employees and Social Media (continued)

- If you link or identify your Agency be mindful of groups/organizations you "like."
- Do network properly showing your agency's talents.
- Do limit your access to social media during your official work hours.
- Do read and familiarize your self with your agency's social media policy.
- Do check your privacy settings. Are your posts limited to friends only?

Hatch Act

- **What is it:**

- All civilian employees in the executive branch of the federal government, except the President and the Vice President, are covered by the provisions of the Hatch Act. Employees of the U. S. Postal Service, are also covered by the Act. Part-time employees are covered by the Act. Federal and District of Columbia employees subject to the Hatch Act continue to be covered while on annual leave, sick leave, leave without pay, or furlough. However, employees who work on an occasional or irregular basis, or who are special government employees, as defined in title 18 U. S.C. § 202(a), are subject to the restrictions only when they are engaged in government business.

- **To whom does it Apply:**

- Federal employees fall within two categories under the Hatch Act, Further Restricted and Less Restricted.

Further Restricted Employees

- Certain federal executive branch employees are prohibited from engaging in partisan political management or partisan political campaigns; hence, these employees are Further Restricted under the Hatch Act. Generally, Further Restricted employees consist of employees in intelligence and enforcement-type agencies (except employees appointed by the President, by and with the advice and consent of the Senate).
- More specifically, Further Restricted employees include employees from the following agencies (or components) or in the following positions:
 - Federal Election Commission
 - Election Assistance Commission
 - Federal Bureau of Investigation
 - Secret Service
 - Central Intelligence Agency
 - National Security Council
 - National Security Agency
 - Defense Intelligence Agency
 - Merit Systems Protection Board
 - Office of Special Counsel
 - Office of Criminal Investigation of the Internal Revenue Service
 - Office of Investigative Programs of the United States Customs Service
 - Office of Law Enforcement of the Bureau of Alcohol, Tobacco, and Firearms
 - National Geospatial-Intelligence Agency
 - Office of the Director of National Intelligence
 - Criminal Division of the Department of Justice
 - National Security Division of the Department of Justice

Less Restricted Employees

- May not use their official authority or influence to interfere with or affect the result of an election.
- May not solicit, accept or receive a donation or contribution for a partisan political party, candidate for partisan political office, or partisan political group.
- May not be candidates for public office in partisan political elections.
- May not knowingly solicit or discourage the participation in any political activity of anyone who has business pending before their employing office.
- May not engage in political activity – i.e., activity directed at the success or failure of a political party, candidate for partisan political office, or partisan political group while the employee is on duty, in any federal room or building, while wearing a uniform or official insignia, or using any federally owned or leased vehicle.

Can I display a picture of a candidate for partisan political office in my workspace?

Answer: Because section 7324 of the Hatch Act prohibits federal employees from engaging in political activity while on duty or in a federal building, the Act generally would prohibit employees from displaying pictures of candidates for partisan public office in the federal workplace.

- See 5 C.F.R. § 734.306, Example 16.
- However, we advise that an employee would not be prohibited from having a photograph of a candidate in his office if all of the following apply:
 - the photograph was on display in advance of the election season; the employee is in the photograph with the candidate; and the photograph is a personal one
 - (i.e., the employee has a personal relationship with the candidate and the photograph is taken at some kind of personal event or function, for example, a wedding, and not at a campaign event or some other type of partisan political event).
- Of course, an employee must not have a political purpose for displaying the photograph, namely, promoting or opposing a political party or a candidate for partisan political office.

Can I wear a partisan political button or t-shirt while I am at work or display such items in my office?

Answer: No.

- Covered employees may not engage in political activity while on duty, in a government office or building, in uniform, or in a government vehicle.
- Wearing or displaying candidate, political party or political group materials while on duty or in your work space qualifies as political activity.
- This prohibition extends to wearing or displaying such items in, for example, the cafeteria, lobby or on-site gym of a federal building.

If I have a bumper sticker on my personal car, am I allowed to park the car in a government lot or garage, or in a private lot/garage if the government subsidizes my parking fees?

Answer: Yes.

- An employee is allowed to park his or her privately owned vehicle with a bumper sticker in a government lot or garage.
- An employee may also park the car with a bumper sticker in a private lot or garage for which the employee receives a subsidy from his or her agency.

Will I violate the Hatch Act if I listen to radio programs discussing partisan politics or candidates for partisan political office, or read a book about politics or political candidates while I am in the federal workplace?

Answer: No.

- Some federal agencies allow employees to listen to the radio while they are at work.
- Merely listening to a radio program that is discussing politics while in the federal workplace, without more, is not a Hatch Act violation. Similarly, merely reading a book about politics or political candidates while in the federal workplace, without more, is not a Hatch Act violation.
- However, employees should make certain that the federal agency where they work does not have any internal policies prohibiting its employees from generally engaging in any of these activities while at work, (i.e., listening to the radio, reading).

Can a federal employee display in his office a photograph of his spouse or child even if the spouse or child is a candidate in an election for partisan political office?

Answer: Yes.

- The Hatch Act does not prohibit a federal employee from displaying photographs of a spouse or child even if the spouse or child is currently running for partisan political office, provided the photograph is not a campaign photograph.

If a federal employee has listed his official title on his Facebook profile, may he/she also fill in the “political views” field?

Answer (All Employees): Yes.

- Although the Hatch Act and its attendant regulations prohibit federal employees from using their official titles while engaging in “political activity,” that is, activity directed toward the success or failure of a political party, partisan candidate, or partisan political group, simply identifying political party affiliation on their social media profiles, which also contains their official title or position, without more, is not “political activity.”

May a federal employee become a “friend” of, or “like,” the Facebook page, or “follow” the Twitter account of a political party, partisan political group, or partisan candidate?

Answer (Less Restricted Employees): Yes, but subject to the following limitations.

- The Hatch Act prohibits federal employees from engaging in political activity while on duty or in a federal building. Thus, if they are a “friend” of, or “like,” a political party, partisan political group, or partisan candidate on Facebook, or “follow” such entities on Twitter, they should not engage in activities with respect those entities’ social media accounts that would constitute “political activity” during duty hours or while in the federal workplace.
- **Answer (Further Restricted Employees):** Yes, but with an added limitation.
 - In addition to the guidelines set forth above for less restricted employees, the Hatch Act prohibits further restricted employees from taking an active part in partisan political management and partisan political campaigns.

May a federal employee create a Facebook or Twitter page in his official capacity and advocate for or against a political party, partisan political group, or partisan candidate on the page?

Answer (All Employees): No.

- Any page created in an employee's official capacity must be limited to official business matters and remain politically neutral. Thus, the Hatch Act would prohibit a federal employee from posting on his or her official Facebook or Twitter account information directed at the success or failure of a political party, candidate for partisan political office, or partisan political group, including providing links to webpages that contain such information.
- The Hatch Act also would prohibit a federal employee from becoming a "friend" of, "liking," or "following" political parties, partisan political campaigns, or partisan political groups on their official social media accounts. Moreover, advocating for or against a political party, partisan group, or partisan candidate on such a page would constitute a violation of the Hatch Act's prohibition against using one's official authority to interfere with or affect the result of an election.



What should a federal employee do if someone posts a comment on the employee's social media page, such as his Facebook page or Twitter feed, that solicits contributions to a political party, partisan political group, or partisan candidate, posts a link to the contribution webpage for such entities, or otherwise solicits political contributions?

Answer (All Employees): Although the Hatch Act prohibits federal employees from soliciting, accepting, or receiving political contributions at any time, they are not responsible for the acts of a third party, even if the third party's actions appear on their social media webpage.

- Thus, if a federal employee's "friend" posts a link to the contribution page of a political party, partisan candidate, or partisan political group, or otherwise solicits political contributions, the employee does not need to take any action. The same advice applies to any tweets directed at a federal employee.
- However, the federal employee should not "like," "share," or "retweet" the solicitation, or respond in any way that would tend to encourage other readers to donate.

Hatch Act Cases Settled

- A civilian Army employee ran in a partisan election despite numerous warnings from both OSC and his agency that doing so was in violation of the Hatch Act. OSC also offered not to seek disciplinary action if the employee withdrew from the election. An OSC investigation further found that he solicited contributions for his campaign, also in violation of the Hatch Act. As a result, the employee served a 180-day unpaid suspension.
- A police officer with an Arizona VA medical center ran in a partisan campaign for Constable, even though he acknowledged he knew doing so was a violation of the Hatch Act. As a penalty for this violation, he was suspended without pay for 20 consecutive calendar days.

Hatch Act Cases Settled (continued)

- A civilian employee with the U.S. Navy in Rhode Island sent seven emails directed at the failure of President Obama's 2012 campaign to fellow federal employees. She sent the partisan emails while on duty and in a federal workplace even though her agency had previously notified her that doing so was a violation of the Hatch Act. She was suspended for five days without pay.
- A contracting officer with the U.S. Army Corps of Engineers sent a highly partisan email to dozens of people. She sent this email, which urged everyone to vote Democrat in the upcoming election, while on duty and in the federal workplace. She acknowledged that she should have known about the Hatch Act and that sending the email was a violation of it. As a penalty, she was suspended without pay for one day.

How an Experienced Attorney Can Help You:

- **Counseling You on Recognizing and Preserving Your Claims**

- Identifying your claims
- Counseling you through difficult situations
- Determining whether exception to the rules applies
- Acquiring and developing evidence to prove your claims

- **Negotiating with the Agency to Settle Your Dispute**

- Evaluating the strengths and weaknesses of your case
- Counseling you on the pros and cons of early resolution
- Leveraging your case and its facts to your benefit
- Ensuring a settlement is in YOUR best interest
- Protecting you in the event the Agency breaches the agreement

- **Ensuring Timeliness**

- Missing a deadline may result in dismissal or significant harm
- Navigating complex deadlines

- **Leveling the Playing Field to Prevent Injustice**

- Neutralizing aggressive defense tactics
- Recognizing improper evidence requests and developing an accurate record



Do You Need Further Information?

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Let us provide you with personalized, professional, and affordable legal services.

Contact your local Agency's Office of Counsel for local specific agency guidance.