

SOCO ADVISORY

**Department of Defense
Office of General Counsel
Standards of Conduct Office**

**MAY 6, 2020
Number 20-03
OSD.SOCO@MAIL.MIL**

This SOCO Advisory forwards the enclosed message from the Director of the Office of Government Ethics and updates the political activities paper in SOCO Advisory 20-02 to reflect recent information received from the Office of Special Counsel.

1. The attached letter from the Director of the Office of Government Ethics encourages leaders to take affirmative steps to remind personnel of the importance of ethics in government as they execute an effective response to the COVID-19 pandemic.
 - a. As one example, a Director of a Defense Agency recently sent a note to all hands, reminding them: “Our “new normal” will change some of our current duties and may create new conflicts of interest where none previously existed... As you make all future ethical decisions, remember that we’ll need to continue to earn the public trust... [Let] your good intentions and judgment...be your compass and your guide.”
 - b. If you have similar examples, please send them to osd.soco.mil and we will share them with DoD leadership.
2. SOCO Advisory 20-02 is updated as follows to reflect recent information received from the Office of Special Counsel. A copy of the revised paper is enclosed.

Does teleworking away from the traditional office setting constitute “while on duty”?

Yes. From whatever location you are teleworking, that site constitutes your place of duty for that particular workday. If you are teleworking from home, you are on duty and may not engage in political activities in your home while you are on duty. Employees participating in virtual work-related conferences are subject to the same on-duty Hatch Act restrictions as when they attend meetings or communicate in-person with others at work. For example, employees should not wear a campaign t-shirt or hat while participating in a work-related video conference call, and they should ensure that any partisan materials, like campaign signs or candidate pictures, are not visible to others during the call.

Additionally, some teleconferencing programs and email applications allow individuals to add a profile picture, which is visible to others. Employees using email or other conferencing programs for work purposes may not use the profile pictures associated

with these platforms to show support for or opposition to a political party, partisan political group, or candidate for partisan political office. For example, employees may not use candidate images, campaign slogans, or political party symbols

DISCLAIMER: The purpose of this advisory is to disseminate relevant information and sources of general guidance, policy and law on Government Ethics issues to the Department of Defense ethics community. Advisories are not intended to be and should not be cited as authoritative guidance, DoD policy, or law

DoD Standards of Conduct Office

<https://dodsoco.ogc.osd.mil/>

POLITICAL ACTIVITIES AND THE HATCH ACT GUIDANCE WHEN TELEWORKING

(updated 04/28/2020)

The Hatch Act (5 United States Code §§ 7321-7326), regulations at 5 C.F.R. Part 734, and DoD policy govern the political activities of DoD civilian employees. Among other restrictions, the statute and regulation prohibit most employees from engaging in political activities in a federal workplace, while on duty, while wearing a Government uniform, badge, or insignia, and while using a government vehicle. Political activity is defined as an activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group. With the increase in home-based telework due to recent events and the Presidential election this year, there may be questions about political activity while teleworking. This fact sheet provides answers to some potential scenarios that could easily arise in a telework setting. *It does not address the additional prohibitions governing “Further Restricted” employees, but please remember that “Further Restricted” employees are prohibited from engaging in political activity as defined above.*

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Yes. From whatever location you are teleworking, that site constitutes your place of duty for that particular workday. If you are teleworking from home, you are on duty and may not engage in political activities in your home while you are on duty. Employees participating in virtual work-related conferences are subject to the same on-duty Hatch Act restrictions as when they attend meetings or communicate in-person with others at work. For example, employees should not wear a campaign t-shirt or hat while participating in a work-related video conference call, and they should ensure that any partisan materials, like campaign signs or candidate pictures, are not visible to others during the call.

Additionally, some teleconferencing programs and email applications allow individuals to add a profile picture, which is visible to others. Employees using email or other conferencing programs for work purposes may not use the profile pictures associated with these platforms to show support for or opposition to a political party, partisan political group, or candidate for partisan political office. For example, employees may not use candidate images, campaign slogans, or political party symbols for profile pictures associated with official accounts or when communicating on official matters.

After I am finished teleworking for the day, can I use my government computer or government mobile phone to engage in partisan political activity?

No. Employees are prohibited from using Government-issued office equipment, email, and the internet *at any time* for the purpose of engaging in political activities. For example, employees may not send or forward political material or messages using their government laptop or government mobile phone after completing a day of telework.

After I am finished teleworking for the day, when I am on my personal time and using my personal devices, can I fundraise for a partisan political party, candidate for partisan political office, or partisan political group?

No. The Hatch Act prohibits federal employees from soliciting or receiving political contributions. Fundraising is a 24/7 prohibition. For example, Federal employees may not ask for contributions, collect contributions, host or forward an online political fundraiser, or promote political fundraisers.

After I am finished teleworking for the day, can I use my personal computer or personal mobile phone to engage in partisan political activity? Yes, you may engage in permitted political activities while using your personal devices.

While teleworking, can I use my personal computer or personal mobile phone to check social media and engage in partisan political activity?

No. While teleworking, you are on duty and therefore you cannot use your personal devices to participate in political activity.

*Example 1: You are looking at Facebook on your personal cell phone. You see that a friend posted a message encouraging others to vote for members of a certain political party. You **may not** like or share that message while you are on duty.*

*Example 2: You are teleworking from home and looking at Twitter on your personal computer. You see that the President tweeted an endorsement of a congressional candidate. You **may not** like or retweet that message while on duty.*

While on my lunch break during a telework day, can I use my personal computer or mobile phone to engage in political activity?

Yes. If you are teleworking from home, you are not in a federal building. If you are on your lunch break, you are on personal time. Therefore, you may use your personal computer or personal mobile phone to engage in political activity while on a lunch break during a home telework day. ***Remember that if you are in a federal building during a lunch break, you cannot use your personal computer or personal mobile phone to engage in political activity.

While teleworking, can I use my government computer or government mobile phone to post a comment on a professional association's online discussion forum or an online news article about a current policy or a proposed policy change?

Yes. Commenting about a current policy or proposed policy change is not considered political activity and therefore the Hatch Act does not restrict this activity. Federal employees may express their opinions about current events and matters of public interest, such as referendum matters, changes in municipal ordinances, constitutional amendments, pending legislation or other matters of public interest, like issues involving highways, schools, housing, and taxes. Employees must still be mindful of using official time for official purposes and of DoD computer-use policies and must ensure they do not use or make any reference to their official position or title when expressing personal

opinions.

This fact sheet is not comprehensive guidance, nor should it be substituted for legal advice. It is intended to provide an overview of the interplay between the Hatch Act and a telework setting. The Hatch Act is a very complex law and involves nuanced analysis. There are different prohibitions that apply depending on whether you are a Further or Lesser Restricted Employee, or a Political Appointee.

Political Activity by Members of the Armed Forces is covered under DoDD 1344.10.

For more information, please contact your local ethics counsel. You can also visit the SOCO website at:

<https://dodsoco.ogc.osd.mil/>



April 27, 2020

MEMORANDUM

To: Agency Heads

From: Emory A. Rounds, III
Director

A handwritten signature in black ink that reads "Emory Rounds".

Our nation is fighting one of its great battles. Americans are confronting tremendous threats to their health, prosperity, and, for many, their very way of living day-to-day. As leaders, the decisions we make today will set the course for our nation for years to come.

To defeat this virus and re-open America will require decisive government action. It will also require the trust of the American people as significant decisions are made. Our ethical leadership is essential to promoting and maintaining that trust.

As the public servants you lead work tirelessly to combat the virus, protect the health and safety of the public, blunt the economic effects, and carry out their mission-critical work, they also look to us for ethical leadership as they execute an effective response to this pandemic.

To this end, please take affirmative steps to remind your agency's officials and employees of the importance of ethics in government. Please continue to seek the counsel of your Designated Agency Ethics Official to ensure that agency decisions are made in accordance with ethics laws and rules. Please continue to lead and take actions that reassure the American people that our government's response continues to be driven with integrity, for the public good, and that decision-making remains free of any taint of private financial interests. In short, please help us protect the foundation of trust that is vital for a strong nation.

I am grateful to you and all of the public servants who are helping our country weather this crisis. I wish you and your agency employees continued mission success.

Thank you for your service to our country.

