

SOCO ADVISORY

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

**October 7, 2021
Number 21-04
OSD.SOCO@MAIL.MIL**

Agency Disciplinary Action for Conduct Related to Alleged Hatch Act Violations

The guidance below is based on conversations SOCO had with the U.S. Office of Special Counsel (OSC) and DoD personnel law attorneys.

As stated in 5 C.F.R. 734.102, OSC has exclusive jurisdiction to investigate and prosecute alleged Hatch Act violations. Consequently, an agency cannot discipline an employee for violating the Hatch Act. An agency may, however, pursue disciplinary action based on other relevant regulations or policies, as illustrated in the examples below.

Example 1: A GS employee at the Department of the Navy volunteers for the campaign of a candidate running for partisan political office. After hours, while in the office, she uses Navy equipment to update the candidate's campaign website and to design campaign literature. Upon learning of the employee's activities, Navy staff forward information related to the alleged Hatch Act violation (engaging in political activity in a federal building) to OSC. Separate from the alleged Hatch Act violation, Navy may pursue disciplinary action for allegedly violating the Standards of Ethical Conduct, specifically, 5 C.F.R. 2635.704, misuse of government equipment.

Example 2: A career SES employee solicits contributions for a political party from several subordinate employees. The SES demotes a subordinate employee for failing to contribute to the political party. The alleged violations of the Hatch Act (fundraising and misuse of official position) are forwarded to OSC. Separate from the alleged Hatch Act violation, DoD may investigate and pursue disciplinary action for an alleged violation of 5 U.S.C. § 2302(b)(3), which prohibits the coercion of the political activity of any person and retaliation for refusal to engage in such political activity.

Example 3: The day after a Presidential debate, several civilian employees of a Defense Agency are discussing the performance of the two candidates in the common space of the office. Employee A encourages his agency colleagues to vote for the Democratic candidate and shares information about upcoming Democratic campaign events. Employee B objects to the discussion and the two employees begin to shout at each other and have to be physically separated by their colleagues. Agency staff forward information related to the alleged Hatch Act violation (engaging in political activity in a federal building) to OSC. Separate from the Hatch Act violation, the agency may pursue disciplinary action for alleged conduct unbecoming of a federal employee based on the unprofessional behavior of the two employees.

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
http://ogc.osd.mil/defense_ethics/